SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 419

PLANKINTON PACKING COMPANY, PETITIONER,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, WILLIAM STOKES, AND LOCAL #50, UNITED PACKING HOUSE WORKERS OF AMERICA, C. I. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

INDEX

	Original	Print
Record from Circuit Court of Milwaukee County, State of Wisconsin	1	1
Petition for review of order of Wisconsin Employment Relations Board	1	1
Proceedings before Wisconsin Employment Relations Board	10	2
Complaint	10	2
Amended complaint	18	6
Answer of Plankinton Packing Company	24	10
Excerpts from transcript of hearing	29	11
Caption and appearances	29	11
Testimony	33	12
Exhibit No. 8—Master agreement for U. P. W. A. Plants	420	16
Exhibit No. 9—Agreement pursuant to Decision of National War Labor Board in matter of Swift & Company and U. P. W. A., June 1, 1945	440	40
Exhibit No. 17—Letter from National Labor Relations Board to Plankinton Packing Company, July 13, 1945	452	43
Findings of fact, conclusions of law and order	455	44
Petition for reconsideration	462	49
Order denying petition for reconsideration	467	52

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—5973

	Original	Print
Record from Circuit Court of Milwaukee County, State of Wisconsin—Continued		
Notice of appearance and statement of position of Wisconsin Employment Relations Board	472	53
Summons	484	54
Petition of Wisconsin Employment Relations Board for a judgment confirming its order	485	54
Answer to petition of Wisconsin Employment Relations Board	494	56
Decision on appeal	498	59
Order for judgment	510	66
Judgment	513	67
Notice of appeal to Supreme Court of Wisconsin	520	68
Proceedings in Supreme Court of Wisconsin	531	69
Minute entry of argument and submission	531	69
Judgment	532	69
Opinion, Rosenberry, C. J.	533	70
Clerk's certificate (omitted in printing)	541	
Order extending time within which to file petition for certiorari	542	77
Order allowing certiorari	543	78

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[fol. 1]

IN CIRCUIT COURT OF MILWAUKEE COUNTY, STATE OF WISCONSIN

PLANKINTON PACKING COMPANY, Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, WILLIAM STOKES, and Local #50, United Packing House Workers of America, C I O, Respondents

PETITION FOR REVIEW—Filed January 3, 1947

To: Wisconsin Employment Relations Board:

Take Notice That Plankinton Packing Company hereby petitions the Circuit Court of Milwaukee County for a review of the Order of the Wisconsin Employment Relations Board dated December 6, 1946 holding the Plankinton Packing Company guilty of unfair labor practices and requiring the re-employment of William Stokes and the payment to said William Stokes of a certain sum of money necessary to make said William Stokes whole.

Appellant's interest in the proceeding is that it was the employer of said William Stokes and that it is a party to the Order of the Board hereinabove referred to.

Grounds of Review

1. The Order of the Board hereinabove referred to should be set aside for the reason that the Board is without jurisdiction or power to make said Order as to the Plankinton Packing Company.

2. That the Board acted in excess of its statutory authority or jurisdiction and that it acted in excess of its powers in making the Order hereinabove referred to.

[fol. 2] 3. In the alternative, that there is no evidence in the record warranting the Board to make the Order above described.

4. That the above described Order of the Board is not supported by credible and competent evidence in the record, and that the Order hereinabove referred to is arbitrary and capricious.

5. That it appears without dispute in the record that William Stokes has not suffered any loss or damage by the alleged act or acts of the Plankinton Packing Company.

6. That it appears without dispute in the record that William Stokes is not and was not an employee of the Plankinton Packing Company under Chapter 111 of the Wisconsin Statutes.

7. That it appears without dispute in the record that William Stokes did not desire or demand re-employment, and suffered no wage loss.

8. That it appears without dispute in the record that the reinstatement of William Stokes as ordered by the Board will not effectuate the purposes of the Act involved, but on the contrary such reinstatement would create a condition or a situation which would be in direct contradiction of the purposes of said Act.

Therefore, the Plankinton Packing Company asks the Circuit Court to review said Findings, Conclusions and Order and set same aside, and for such other and further judgment, order or relief as the circumstances may warrant.

Quarles, Spence & Quarles, Attorneys for Plankinton Packing Company.

[fols. 3-9a] (Affidavits of Service Omitted)

[fol. 10] BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

Case II. No. 1017 Ce-166

WILLIAM STOKES, Complainant,

vs.

PLANKINTON PACKING COMPANY, a Corporation, and Packing House Workers, C. I. O., Respondent

COMPLAINT

The Complainant above named complains that the Respondent has engaged in and is engaging in unfair labor practices contrary to the provisions of Chapter 111 of the Wisconsin Statutes and in that respect alleges:

1. That William Stokes is a citizen and resident of the county of Milwaukee, state of Wisconsin, and was an em-

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ployee of the respondent for a period of thirteen (13) years prior to May 8, 1945.

2. That the respondent, Plankinton Packing Company, is a corporation duly organized in the state of Wisconsin and authorized to do business by virtue of the laws of the state of Wisconsin, having its principal place of business at 230 South Muskego Avenue in the city and county of Milwaukee, state of Wisconsin.

3. That the respondent, the Packing House Workers C. I. O., is a voluntary labor organization affiliated with the Committee of Industrial Organization.

4. That on or about the 20th day of February, 1945, a directive order was issued by the National War Labor Board; the directive inter alia provided for union security on page 3100 under issues designated 45 to 54.

> "All demands of the companies and of the union for changes in the provisions relating to union security in the master agreements in and between the parties are denied. There shall be included in the new master agreements in all cases the following provisions:
>
> All employees, who on March 9, 1945, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.
>
> [fol. 11] "The Union shall immediately after the aforesaid date, furnish the National War Labor Board with a notarized list of its members in good standing as of that date.
>
> "The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.
>
> "If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above, or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by

the National War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date, or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be elected in the manner provided by the contract of the parties, or if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the National (Regional) War Labor Board, on due application. The decision of the arbitrator shall be final and binding upon the parties.

"Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance of membership provision may use the attached form of notice. A statement of the procedure to be followed in administering the maintenance of membership provision, in the absence of some other procedure agreed to by the parties, is also attached."

"The Company, for said employees, shall deduct from the first pay of each month the union dues for the preceding month and promptly remit the same to the duly designated officer of the Union. The initiation fee of the union shall be deducted by the Company and remitted to the duly designated officer of the union in the same manner as dues collection."

5. That the complainant exercised his prerogative under the provisions as therein contained, tendering his resignation from the Packing House Workers C. I. O. (hereinafter referred to as "C. I. O.") within the proper period as therein made and provided.

6. That thereafter, and upon complainant's resignation from the C. I. O., the officers, stewards, and certain other members of the C. I. O. commenced a course of conduct of and towards the complainant which was designed to coerce the complainant to become a member of the C. I. O. [fol. 12] in violation of Section 111.06 (1) (L) (a), of the Wisconsin Statutes.

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That such acts consisted of the following:

(a) That the employees in his department were instructed to avoid carrying on any conversation with him.

(b) That the steward and other members working with him in the department became abusive and hurled vile and insulting epithets of and towards this complainant referring to him as a "skunk" and a "rat", etc.

(c) Complainant was informed that physical violence would be visited upon him if he continued his employment at the respondent's plant.

(d) On May 1, 1945, all of the employees in his department who are members of the respondent C. I. O. refused to work in the department with the complainant.

(e) That the complainant was called into the office by the respondent, Plankinton Packing Company, and informed that it had become necessary to transfer him out of the department where he was then employed with a loss of rights and benefits which were incident to such transfer.

(f) That the respondent, Plankinton Packing Company, ordered the complainant to take several days off, advising him that they would discuss the matter with the respondent during that period and would then be informed of the results of such conferences.

(g) That on May 9, 1945, the complainant reported for work and as a result of an episode, as the complainant is informed and verily believes was pre-arranged and designed for the purpose of bringing about the discharge of the complainant, the several of the officers of the respondent C. I. O. referred to the complainant in a vile and abusive manner, and within a short time thereafter the complainant was discharged from him employment by the respondent, Plankinton Packing Company, in violation of Section 111.06 (1) (c) of the Wisconsin Statutes.

7. That all of these acts as hereinbefore set forth on the part of the respondents were designed to coerce the com-

plainant to join the Packing House Workers C. I. O. union, and as such, was an unfair labor practice as prescribed by chapter 111 of the Wisconsin Statutes.

8. That the respondents have engaged in unfair labor practices contrary to the provisions of Section 111.06, (1) (a) and (1) (c) and (1) (a) of the Wisconsin Statutes.

9. That the respondents be ordered to cease and desist from engaging in unfair labor practices and be further ordered and required to reinstate the complainant in his [fol. 13] employment and to make whole to the said complainant for any loss of earnings sustained by him during the period that he remained unemployed as a result of the unfair labor practices of the respondent and for such other and further relief as the complainant may be entitled to according to law.

David Beznor, Attorney for complainant.

[fols. 14-17] *Duly sworn to by William Stokes. Jurat omitted in printing.*

[fol. 18] BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

[Title omitted]

AMENDED COMPLAINT

The Complainant above named complains that the Respondent has engaged in and is engaging in unfair labor practices contrary to the provisions of Chapter 111 of the Wisconsin Statutes, and in that respect alleges:

1. That William Stokes is a citizen and resident of the county of Milwaukee, state of Wisconsin, and was an employee of the respondent for a period of thirteen (13) years prior to May 8, 1945.

2. That the respondent, Plankinton Packing Company, is a corporation duly organized in the state of Wisconsin and authorized to do business by virtue of the laws of the state of Wisconsin having its principal place of business at 230 South Muskego Avenue in the city and county of Milwaukee, state of Wisconsin.

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3. That the respondent, the United Packing House Workers of America C. I. O., is a voluntary labor organization affiliated with the Committee of Industrial Organization.

4. That on or about the 20th day of February, 1934, a directive order was issued by the National War Labor Board; the directive inter alia provided for union security on page 3100 under issue designated 45 to 54.

"All demands of the companies and of the union for changes in the provisions relating to union security in the master agreements in and between the parties are denied. There shall be included in the new master agreements in all cases the following provisions:

All employees, who on March 9, 1945, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

[fol. 19] "The Union shall immediately after the aforesaid date, furnish the National War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above, or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the National War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date, or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties, or if

no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the National (Regional) War Labor Board, on due application. The decision of the aribtrator shall be final and binding upon the parties.

"Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance of membership provision may use the attached form of notice. A statement of the procedure to be followed in administering the maintenance of membership provision, in the absence of some other procedure agreed to by the parties, is also attached.

"The Company, for said employees, shall deduct from the first pay of each month the union dues for the preceding month and promptly remit the same to the duly designated officer of the Union. The initiation fee of the union shall be deducted by the Company and remitted to the duly designated officer of the union in the same manner as dues collection."

5. That the complainant exercised his prerogative under the provisions as therein contained, tendering his resignation from the United Packing House Workers of America C. I. O. (hereinafter referred to as "C. I. O.") within the proper period as therein made and provided.

6. That thereafter, and upon complainant's resignation from the C. I. O., the officers, stewards, and certain other members of the C. I. O. commenced a course of conduct of [fol. 20] and towards the complainant which was designed to coerce the complainant to become a member of the C. I. O. in violation of Section 111.06 (1) (L) (a), of the Wisconsin Statutes.

That such acts consisted of the following:

(a) That the employees in his department were instructed to avoid carrying on any conversation with him.

(b) That the steward and other members working with him in the department became abusive and hurled vile and insulting epithets of and towards this complainant referring to him as a "skunk" and a "rat", etc.

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(c) Complainant was informed that physical violence would be visited upon him if he continued his employment at the respondent's plant.

(d) On May 1, 1945, all the employees in his department who are members of the respondent C. I. O. refused to work in the department with the complainant.

(e) That the complainant was called into the office by the respondent, Plankinton Packing Company, and informed that it had become necessary to transfer him out of the department where he was then employed with a loss of rights and benefits which were incident to such transfer.

(f) That the respondent, Plankinton Packing Company, ordered the complainant to take several days off, advising him that they would discuss the matter with the respondent during that period and would then be informed of the results of such conferences.

(g) That on May 9, 1945, the complainant reported for work and as a result of an episode, as the complainant is informed and verily believes was prearranged and designed for the purpose of bringing about the discharge of the complainant, the several of the officers of the respondent C. I. O. referred to the complainant in a vile and abusive manner, and within a short time thereafter the complainant was discharged from his employment by the respondent, Plankinton Packing Company, in violation of Section 111.06 (1) (c) of the Wisconsin Statutes.

7. That all of these acts as hereinbefore set forth on the part of the respondents were designed to coerce the complainant to join the United Packing House Workers of America C. I. O. union, and as such, was an unfair labor practice as prescribed by Chapter 111 of the Wisconsin Statutes.

[fol. 21] 9. That the respondents be ordered to cease and desist from engaging in unfair labor practices and be further ordered and required to reinstate the complainant in his employment and to make whole to the said complainant for any loss of earnings sustained by him during the period that he remained unemployed as a result of the unfair labor

practices of the respondent and for such other and further relief as the complainant may be entitled to according to law.

David Beznor, attorney for complainant.

[fols. 22-23] *Duly sworn to by William Stokes. Jurat omitted in printing.*

[fol. 24] BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

[Title omitted]

ANSWER OF PLANKINTON PACKING COMPANY

Now comes the respondent, Plankinton Packing Company, by its attorneys, Messrs. Wm. N. Strack and Neal J. Huff, for answer to the complaint filed herein and says:

1. That the State of Wisconsin and the Wisconsin Employment Relations Board has no jurisdiction to hear the alleged cause of complainant by reason of the Laws and Constitution of the United States of America.

2. That complainant is barred from bringing any action such as alleged by a valid and binding contract between the Plankinton Packing Company and the certified bargaining representative of the production and maintenance employes of the Plankinton plant.

3. That this respondent admits the allegations of paragraphs No. 1 and 2 of the complaint.

4. That this respondent is without knowledge as to whether there exists a union known as "Packinghouse Workers, C. I. O." In this connection, respondent asserts that Local No. 50 of the United Packinghouse Workers of America (C. I. O.) is the union which is certified by the National Labor Relations Board as the exclusive bargaining representative for the production and maintenance employees at the Plankinton Packing Company plant.

5. That this respondent admits that the allegations of paragraph 4 of the complaint are correct in all material respects.

[fols. 25-28] 6. That this respondent is without knowledge as to the facts alleged in paragraph 5 of the complaint, and therefore denies the same.

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7. That this respondent is without knowledge of the facts in connection with the allegations of paragraph 6 including sub-paragraph (a), (b), (c), and (d) of the complaint and therefore denies such allegations.

8. That this respondent denies the allegations contained in sub-paragraphs (e), (f), and (g) of paragraph 6 of the complaint.

9. That this respondent denies the allegations of paragraphs 7 and 8 of the complaint.

Wherefore this respondent prays that the complaint herein be dismissed.

Plankinton Packing Company, William N. Strack, Neal J. Huff.

[fols. 29-32] BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

Case II, No. 1017 Co-166

WILLIAM STOKES, Complainant,

v.

PLANKINTON PACKING COMPANY, a Corporation, and United Packing House Workers of America, C. I. O., Respondents

EXCERPTS FROM TRANSCRIPT OF HEARING

Pursuant to notice, the above matter came on for hearing before the Wisconsin Employment Relations Board in Room 409 of the Court House, Milwaukee, Wisconsin, on Monday, September 10, 1945, commencing at 2:10 P. M.

Present: Chairman L. E. Gooding, Commissioner J. E. Fitzgibbon, Commissioner R. Floyd Green.

Appearances:

Mr. David Beznor, Attorney, for the complainant; Mr. John Staley, Attorney, for the respondent Company; Mr. A. W. Richter, Attorney, for the respondent Union.

Whereupon the following proceedings were held.

* * * * * * *

[fols. 33-112] Q. Do you know when the C.I.O. union became the bargaining agent for the production employes in that plant?

A. I think it was in March 1938, to the best of my recollection. The 18th of March to the best of my recollection.

Q. Did you become a member of the union?

A. Yes, I did.

Q. Remained as a member of that union until when?

A. Until the escape clause ending the 9th of March this year—some time during that time, I don't know just the exact date. I think the 5th or 6th of March I sent in my resignation by registered mail to the President of the union, Superintendent of the plant, and the Financial Secretary.

Q. That you were taking advantage of the escape clause?

A. Yes.

Q. And resigned from the union?

A. Yes.

• • • • • • •

[fols. 113-161] Q. Do you know approximately how many meetings you held with Mr. Stokes?

A. Three, as I recall it.

Q. Can you space them? Approximately when they were held?

A. Yes, I have a couple dates here—three dates here, to be exact. The first one is April the 11th.

Q. What is the year?

A. 1945. April 16th, the same year, and May first, the same year, also on May the 9th.

Q. May 9th was the day he was discharged, is that right?

A. Yes, sir.

• • • • • • •

[fol. 162] Q. In what business is the Plankinton Packing Company engaged in?

A. Slaughtering and processing meat food products.

Q. Are you able to state approximately the value of the livestock and other supplies purchased and processed at the plant here during the last fiscal year?

A. Of 1944?

Q. That would end in October 1944?

A. Right.

Q. Are you able to state that?

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A. Yes, sir.

Q. What was it approximately?

A. $36,700,000.

Q. Are you able to state what percentage of livestock and supplies were purchased outside the State of Wisconsin or transported to the plant from other states?

A. Approximately 45%.

Q. The approximate value of the product produced and sold by the plant during the same time?

A. Approximately $41,000,000.

Q. Can you state approximately what percentage of that was sold and delivered by the company outside of the state of Wisconsin?

A. Approximately 64% outside this state and 36% in Wisconsin.

[fol. 163] Q. Sixty-four percent outside the state?

A. Yes, sir.

Q. Would that product leave your plant in cars and trucks destined for out of state points?

A. Yes, sir.

Q. I ask the Board to take judicial knowledge of the decision and direction of election by the National Labor Relations Board in the matter of the Plankinton Packing Company Case No. R-585, the decision being found at 5 NLRB Reporter, page 813. I have a copy of that decision present.

Chairman Gooding: It is not necessary to offer it because it is in the record and we have those reports.

Q. I also ask the Board to take judicial knowledge of the certification by the National Labor Relations Board in that same case which appears in Vol. 6, NLRB at page 561. (Exhibit No. 8 marked by the Reporter) I hand you what has been marked Exhibit 8 and ask you to state if you know what that is.

A. Yes, sir.

Q. What is it?

A. It is a copy of the master agreement for UPWA and Swift and Company, or the Plankinton Packing Company.

Q. Can you state the date on which that was executed?

A. December 14, 1943.

Q. Is the Plankinton Packing Company a subsidiary of Swift and Company?

A. Yes, sir.

Q. And bargaining between Swift and Company on behalf of all its plants where employes are represented by the UPWA and the union has been on a national basis, has it not, in the form of master agreements?

A. Yes, sir.

Mr. Beznor: What is the purpose of it?

Mr. Staley: Respondent offers Exhibit 8 in evidence.

Mr. Beznor: I object on the ground it purports to be a copy of the original which is probably available and has not been brought in. Secondly, it is immaterial, no reason has been set forth.

Q. Mr. Watson, do you have a copy of the original signed copy of this agreement? Do you have the original signed copy?

[fol. 164] A. The original signed copy? No, sir.

Q. The signed copy——

A. The original signed copy is in Chicago.

Q. Not in the state of Wisconsin?

A. No, sir.

Q. Is it in the possession of the Plankinton Packing Company?

A. No, sir.

Q. Could you obtain it to use as evidence here?

A. No, sir.

Mr. Beznor: I will waive the objection, but still reserve the right to have a ruling on the second part of the objection. I don't want to discommode you.

Chairman Gooding: That it is immaterial? This is the present contract that exists between the parties?

Mr. Staley: Yes, sir.

Chairman Gooding: It hasn't been changed?

Mr. Staley: It has by certain War Labor Board orders and subsequent agreements which I also have and intend to introduce.

Mr. Richter: This is in effect as changed?

Chairman Gooding: Objection over-ruled. It will be received.

Mr. Beznor: I understand you are going to introduce a National Labor Board directive also?

Mr. Staley: I asked the Board to take judicial knowledge of that. I have a copy here. I can make copies——

Chairman Gooding: If you give the reference.

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Mr. Staley: It appears in 21 War Labor Reports, I do not have the page, however, it is listed under Swift and Big Four Packing Company case, and for the Board's information I have a copy of the advance release of the Division of the Public Information press release, N.L.R.B., RB-1962 which contains the press release attached to which is a copy of the directive order in the case and also the decision of the board.

Chairman Gooding: Now the directive order, or at least part of it is set out in the complaint of the complainant. There is no question, is there, Mr. Staley about the allegations of the complainant being a copy of what is contained in the directive order as far as it goes—it doesn't purport [fols. 165-185] to be the whole directive.

Mr. Staley: I haven't compared it, but I have read the complaint. It sounds the same.

Chairman Gooding: Sounds like the usual War Labor Board——

Mr. Staley. In pointing out the differences later, I am willing to agree it is the same. However, I assume the Board will take judicial knowledge of the order of the War Labor Board, that is in Case Number 111-5544-D. (Exhibit No. 9 marked by the reporter) I hand you what has been identified as Exhibit No. 9 and ask you what that is, if you know.

A. A decision of the War Labor Board in the matter of Swift and Company.

Q. Is that decision or agreement between the company and union?

A. It is an agreement.

Q. Is that the agreement by which the company and the union settled friends, if you wish, and modified this contract of December 1943?

A. Yes, sir.

Q. In certain respects?

A. Yes, sir.

Q. Respondent offers Exhibit No. 9 in evidence.

Mr. Beznor: No objections.

Chairman Gooding: It will be received.

* * * * * * *

[fol. 186] Q. Will the parties stipulate that the——

Mr. Beznor: Just a minute before stipulating. I will stipulate tha- is the letter, but I will object to its introduction in evidence. I don't think it is material in this proceeding. The Amalgamated Meat Cutters isn't a part of this proceeding nor a party to it in any way, shape or form.

Q. I don't want you to stipulate, I wanted to stipulate a petition had been filed——

Mr. Beznor: I cannot stipulate to that because I don't think it is a part of the proceeding in this case.

Q. Will you stipulate that George J. Bott, Regional Director, directed a letter to the company of which this is a copy?

Mr. Beznor: That I will.

Q. Then you reserve your right to object to its introduction on the ground of its materiality? (To Mr. Richter) Will you stipulate that is a copy of a letter George J. Bott directed to the company?

Mr. Richter: Yes, I will stipulate.

[fols. 187-419] (Exhibit No. 17 marked by Reporter)

Q. The company offers Exhibit No. 17 in evidence.

Mr. Beznor: It is immaterial. The Amalgamated isn't a party to this proceeding and has no effect on this proceeding whatsoever. Neither the complainant nor the Amalgamated is bound by the letter and certainly the complainant isn't bound by any letter from the Regional Director of the National Labor Relations Board. I don't see where there is any materiality or how it links or fits into this case at all. The only reason I stipulated that was the letter I didn't want counsel to get the original letter.

Chairman Gooding: For what purpose is the letter offered, Mr. Staley? It merely sets forth there is a petition filed for an election by the A. F. L.

• • • • • • •

[fol. 420] EXHIBIT No. 8

Master Agreement for U. P. W. A. Plants

1. This agreement made between Swift and Company (hereinafter called the Company) on behalf of its meat

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packing plants set forth in Section II hereinafter, and United Packinghouse Workers of America, affiliated with the Congress of Industrial Organizations, (hereinafter called the Union) on behalf of the Local Unions set forth in Section II hereinafter.

Recognition

2. The Company recognizes the Union as the exclusive collective bargaining agency for the employes in the bargaining units set forth in Exhibit 1 attached hereto and made a part hereof, at the following meat packing plants where the following locals of the Union are recognized as the exclusive bargaining agencies:

Plants	Local Unions

Chicago, Illinois, No. 26, U. P. W. A. (C. I. O.)-G. H. Hammond Plant.

Chicago, Illinois, No. 28, U. P. W. A. (C. I. O.)

Omaha, Nebraska, No. 47, U. P. W. A. (C. I. O.)

Milwaukee, Wisconsin, No. 50, U. P. W. A. (C. I. O.) Plankinton Packing Company Plant.

Los Angeles, California, No. 67, U. P. W. A. (C. I. O.)

Sioux City, Iowa, No. 71, U. P. W. A. (C. I. O.)

Denver, Colorado, No. 88, U. P. W. A. (C. I. O.)

Des Moines, Iowa, No. 89, U. P. W. A. (C. I. O.) Iowa Packing Company.

Newark, N. J., No 106, U. P. W. A. (C. I. O.)-Van Wagenen & Schickhaus Plant.

Atlanta, Georgia, No. 108, U. P. W. A. (C. I. O.)-White Provision Company Plant.

Evansville, Indiana, No. 125, U. P. W. A. (C. I. O.)

Harrison-Kearney, N. J., No. 133, U. P. W. A. (C. I. O.)

New York City, N. Y., No. 140, U. P. W. A. (C. I. O.)-United Dressed Beef Company Plant.

Cambridge, Massachusetts, No. 165, U. P. W. A. (C. I. O.)-North Squire Plant.

Somerville, Massachusetts, No. 189, U. P. W. A. (C. I. O.)-New England Dressed Meat & Wool Co.

Jersey City, N. J., No. 221, U. P. W. A. (C. I. O.)

3. The Company will not bargain collectively with any other labor organization affecting employes in such units.

4. The Company shall give preference, when hiring people, to former employes whose services were satisfactory. The Company is not opposed to the Union.

5. Not Agreed Upon As Yet.

6. " " " " "

7. " " " " "

Purpose of Agreement

8. It is the intent and purpose of the parties hereto that this agreement shall promote and improve the industrial [fol. 421] and economic relationships between the Company and the Union as set forth herein and to set forth herein rates of pay, hours of work and other conditions of employment to be observed between the parties hereto.

9. It is recognized by both parties that they have a mutual interest and obligation in maintaining friendly cooperation between the Company and the Union which will permit safe, economical and efficient operation of the plants.

Management

10. The management of the plants and direction of the working force, including the right to hire, suspend or discharge for just cause, to assign to jobs, to transfer employes within the plant, to increase and decrease the working force, to determine products to be handled, produced or manufactured, the schedules of production and the methods, processes and means of production or handling is vested exclusively in the Company, provided this will not be used for the purpose of discrimination against any employe or to avoid any of the provisions of this Agreement.

Policy—No Discrimination

11. The Company agrees that it will give fair and reasonable consideration to any applicant or employe regardless of race, sex, color, creed, nationality, or membership in the Union.

Hours of Work

12. The regular work week shall start with Monday and end with Sunday. The start and end of a day as is now the practice at each plant shall continue unless otherwise agreed upon by the superintendent and the local union.

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Employes who are not assigned to work regularly performed on Sunday when required to work on Sunday will be given that work in addition to their regular work for that week.

The basic work day will be eight (8) hours. The basic work week will be forty (40) hours. Every reasonable effort will be made to limit the hours to eight (8) in one day and forty (40) in one week. It is understood that the foregoing does not restrict the amount of time an employe can be required to work to eight hours in one day or forty (40) hours [fol. 422] in one week, provided that no employe will be required to work unreasonable hours.

13. Employes who are required to work over eight (8) hours in any one day or forty (40) in any one week will be paid one and one-half (1½) times the regular rate for all such overtime hours. This shall not apply to truck drivers. Time and one-half shall be paid for all hours worked by truck drivers in excess of forty-eight (48) hours in any one week, provided that where a local arrangement with reference to either daily or weekly overtime now in existence is more favorable to the drivers, it shall continue. It is understood that employes will not be paid both daily and weekly overtime for the same hours.

14. The relief period or spellout time as is in practice at present at each plant will be continued unless, as a result of collective bargaining, the relief period or spellout time shall be changed.

15. Employes required to work more than five (5) consecutive hours without a meal period shall be compensated at one and one-half (1½) times the regular rate of pay for all time worked in excess of five (5) hours until a meal period is granted by the Company except that five and one-half (5½) hours may be worked when this will complete the day's work or in case of a mechanical breakdown. Employes will be considered as being required to work unless other arrangements have been made with the department steward in the case of a group or with an individual in the case involving an individual. Employes required to work more than five (5) consecutive hours after the first meal period will be furnished a meal by the Company and be allowed time off with pay, not to exceed twenty (20) minutes for such meal period. Employes engaged in continuous

operations shall be exempt from this paragraph but shall be entitled to eat lunch on Company time.

16. There shall be established equal distribution of work hours available in each department so far as is practicable.

17. The Company agrees to use every reasonable effort to schedule operations so that employes will work as close to forty (40) hours per week as is practicable.

[fol. 423] Holidays

18. Double the regular rate shall be paid for work performed on Sundays and holidays except where the work regularly falls on Sunday.

The following shall be considered as holidays:

New Year's Day.
Washington's Birthday.
Decoration Day.
Fourth of July.
Labor Day.
Armistice Day.
Thanksgiving Day.
Christmas.

19. Employes who must work regularly on Sunday shall have a designated day of rest for Sunday. Emergency work performed on that day will be paid for at double the regular rate. A holiday for employes whose work regularly falls on such holiday will be from 7:00 a. m. to 7:00 a. m., starting the morning of the holiday; for all other employes the holiday is the calendar day, 12:00 midnight to 12:00 midnight. Where one of the above holidays falls on Sunday, such holiday shall be observed on the following Monday if so nationally observed.

20. No work will be considered regular Sunday work until a gang has worked four consecutive Sundays.

Wages

21. Not Agreed Upon As Yet.

22. Not Agreed Upon As Yet.

23. Not Agreed Upon As Yet.

24. Not Agreed Upon As Yet.

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25. 5¢ per hour additional compensation will be paid for work performed between the hours of 6 P. M. and 6 A. M., except in those plants where the regular starting time is after 7 A. M., in which case the additional compensation will be paid for the hours worked between 7 P. M. and 7 A. M.

26. New employes who have had previous experience and can perform the work in a satisfactory manner in the particular position for which they are being employed will receive the regular rate for the job.

27. Not Agreed Upon As Yet.

28. Not Agreed Upon As Yet.

29. Employes called to work will be provided with a minimum of four (4) hours' work or pay in lieu of work, such pay to start from the hour the employe is required to report for work.

[fol. 424] 30. Any employe called back to work on same day after once going home shall be paid at the rate of time and one-half (1½) for all hours worked on recall, and shall be guaranteed a minumum of four (4) hours. This shall not apply when shifts are being changed.

Vacations

31. Vacation eligibility requirements are based on accumulated service. An employe becomes eligible for vacation for the First Time when the employment records show that either of the following requirements has been met.

A. The completion of 365 calendar days of accumulated service without having been off the payroll for more consecutive days than 30, Sundays and holidays included, while accumulating this service.

Or

B. As soon as the employment records show any consecutive 365 day period during which he has completed 300 calendar days on the payroll.

32. Employes who have received their first vacation are thereafter eligible to receive subsequent annual vacations any time on or after January First. The length of the

vacation will depend upon the length of their accumulated service and upon their sex:

One week vacation annually until an employe's accumulated service equals five (5) years.

Two weeks vacation annually thereafter until a female employe's accumulated service equals fifteen (15) years and a male employe's service equals twenty (20) years.

Three weeks vacation annually thereafter.

33. Employes who are entitled to two or more weeks of vacation may take their vacation at any time during the year in which the required service will presumably be completed.

34. Only actual time on the payroll is to be considered in computing service for vacation purposes. For the purpose of determining future vacation eligibility, war service of employes returning to employment shall be considered as actual time on the payroll. No employe will be paid vacation pay for the time spent in war service.

35. If an employe qualifies for vacation but leaves the service for any reason, he will resume the same status if he is later reemployed, regardless of how long an interval may have elapsed. However, he may not be given any vacation after his reemployment until he has again met the requirements for first vacation.

36. Vacations will, as far as possible, be granted for the period selected by the employe, but final allocation of vaca- [fol. 425] tion periods is left to the company in order to assure orderly operation of the plant.

37. Every reasonable effort will be made by the Company to permit each employe to take his vacation between May 1 and October 1. In the choice of vacation dates, seniority shall prevail.

38. Vacations will be granted only in the year in which they are due and may not be carried over to the following year. If, however, due to some emergency an employe is not permitted to take his vacation during the year in which it is due, he shall have the right to take it in the ensuing year.

39. Vacation pay shall be figured on the basis of forty (40) hours per week at the employe's regular rate except

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in the case of those employes who are not subject to the forty-hour limitation. These are to be paid on the basis of their normal work week. Employes who would have earned more pay remaining at work because of overtime pay earned by the rest of the gang during their absence on vacation will be paid upon their return to work the difference between the pay already received and gang time at their hourly rate with overtime.

40. Employes entitled to vacations will not be allowed to take money in lieu thereof.

41. An employe eligible for vacation who is laid off because of reduction in his gang shall be allowed pay for the vacation for which he had qualified. Employes who have earned vacations under this vacation plan but who become sick or are injured prior to the date selected for their vacation may, upon request to the Company, receive their vacation pay.

42. Unexercised vacation privileges are forfeited if an employe voluntarily quits or is discharged from service for cause.

43. Employes receiving vacations hereunder will receive vacation pay at the beginning of the vacation period, if so desired.

44. This vacation plan is to become effective as of January 1, 1944.

Seniority

45. Seniority will operate on a combination departmental and plant basis. Seniority departments as now set up will remain in effect unless otherwise agreed upon between the plant superintendent and the local union. Department seniority of each employe shall be agreed upon with representatives of the union as of the date of this agreement. [fol. 426] Plant seniority of each employe will be furnished to the union as of the same date. The question of whether new departments created by the Company shall be included in existing seniority department or shall constitute a separate seniority department shall be determined by agreement with the union.

46. Employes shall not acquire any seniority rights during a probationary period of thirty (30) days' accumulated

service. However, if an employe is continued in employment after such period, his seniority shall commence from the original employment date.

47. Lay-offs and reemployment will be according to plant seniority, as determined by accumulated plant service.

Promotions and demotions within the bargaining units will be based upon departmental seniority, provided, however, that when the department seniority list has been exhausted vacancies shall be filled from the waiting list of applicants from other departments according to their plant seniority; and, provided further, that the employe can perform the job or learn the job within a reasonable time except that, in cases of necessity where no applicants are available who can perform the job and there is insufficient time in view of such necessity to teach an applicant the job, a new employe may be hired for such vacancy. An employe will be paid the job rate as soon as he qualifies as a normal operator.

Employes will be transferred from one department to another according to the following rules:

1. At his own or the Company's request for a period not to exceed ninety (90) days without losing his seniority status in his own department. If, for any reason, he decides to return to his original department within the ninety (90) day period, he shall be permitted to do so, otherwise he shall forfeit his seniority in his original department. He shall, however, establish temporary seniority in the new department from his first day there, which shall become his permanent departmental seniority in the event that he elects to remain in the new department.

Where an employe is transferred pursuant to this clause and after such transfer his original department is reduced, he must elect at the time of such reduction whether to stay in the new department or to return to his old department and be assigned according to his plant seniority.

2. Employes laid off in their own department due to gang [fol. 427] reduction shall be permitted to displace the junior employee in the plant or go off the payroll and shall in the first case establish temporary seniority in the department to which he goes, and in both cases suffer no loss of his

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seniority status in his own department. If there is a further reduction of forces in his own department, or if he is recalled in his seniority turn, he shall either return or shall lose his seniority in his own department, at which time his temporary seniority in the new department becomes permanent.

No transfer from one department to another shall be made except with the consent of the employe involved, which, if the transfer is permanent, must be in writing.

48. Employes transferred to a new department created by the Company during the life of this agreement, shall, upon the closing of the department, during the life of this agreement, have the right to return to the department from which transferred, and shall retain the seniority which such employes would have had, had they remained in their original department.

49. In increasing working forces according to seniority, employes laid off will be notified by the present method of contact, or by telegram, or registered letter, at their last known address, and they will be expected to report as directed. Failure to do so shall forfeit their seniority rights provided however, that in cases of inability to do so, upon immediate notification to the Company, they will be given five additional days.

50. Employes proved to have been laid off out of turn, or discharged without proper cause, will be returned to their former position and will be paid for all time lost provided complaint is made within one week from the date of layoff or discharge.

51. All seniority rights shall be forfeited when an employe voluntarily leaves the service of the Company or is discharged for proper cause or has been out of employment by the Company, for twelve months or longer, due to lack of work.

52. Seniority records will be made available to employes or the union representative.

[fol. 427a] Leave of Absence

54. Leaves of absence (without pay), beyond regular vacation to which an employe is entitled, may be granted

for good and sufficient reason, on the basis of length of continuous service as follows:

[fol. 427b]

Length of Service	Leave of Absence
Under 5 years	2 weeks
Over 5 years and under 10 years	1 month
Over 10 years and under 15 years	2 months
Over 15 years	3 months

55. Leaves of absence will not be granted for the purpose of allowing an employe to take another position temporarily, try out new work, or venture into business for himself.

56. Employes not exceeding a number agreed upon by the Company and local union representatives at each plant, chosen by the Union to attend a union business outside the plant, shall, with permission of the Company, be granted leave of absence without pay, not exceeding thirty (30) days.

57. Employes, not to exceed three (3) from any one plant, who are elected or appointed to a full time position with the Union, upon proper notice shall be granted a leave of absence, without pay, not to exceed the life of this agreement, and upon one (1) week's notice of their desire to again return to work for the Company shall be placed upon their job previously held or one of equal pay without loss of seniority and provided they are capable of performing the work.

Adjustment of Grievances

58. A plant grievance committee of employe representatives, the number to be determined locally, shall be designated by the Union. A number, not to exceed twelve, will be afforded the necessary time off to attend any grievance meeting with the Company's designated representatives for the purpose of settling any and all disputes as provided for herein. Employes attending such meetings shall be paid if it is necessary for them to be away from their work to attend such meetings during the normal work day of eight hours. The Company will supply the necessary information from the records to the grievance committee whenever it is necessary.

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59. Should differences arise between the Company and the Union or between the Company and the employes or between employes of the Company or should any local trouble of any kind arise in the plant, pertaining to matters involved in this agreement, or incident to the employment relation, there shall be no strike, stoppage, slowdown or suspension of work on the part of the Union or its members, or lockout on the part of the Company on account of such disputes until after an earnest effort has been made to settle all such matters immediately in the following manner and order, and it is the declared policy of the parties hereto that all such matters shall be settled as promptly as possible.

[fol. 428] First: Between the aggrieved employe or employes, with or without his employe union representative, together with the foreman or forelady of the department involved.

Second: Between the employe union representative or representatives (not exceeding three), with or without the aggrieved, and the foreman or forelady of the department involved.

Third: Between the Union representative or representatives (not exceeding three), with or without the aggrieved employe or employes and either the general foreman or division superintendent but not both.

Fourth: Between the Union representative or representatives (not exceeding three), with or without the aggrieved employe or employes and the plant superintendent or his designated representative.

Fifth: Between a member or members of the grievance committee designated by the Union and the Company's designated representatives. In the event said parties fail to reach a decision, both the Company and the grievance committee shall have the right to call witnesses in the case, and, if necessary, visit the department involved in order to get all evidence concerning the case. All grievances presented in this step, and the Company's position, shall be in writing.

Sixth: In the event that said parties fail to reach a decision, both the Company and the grievance committee have the right to call on the General Superintendent of

the Company, or his designated representative or representatives, and the international representative of the Union to assist in the settlement of any dispute at the plant.

Seventh: In the event no decision is reached by the international representatives of the Union and the General Superintendent of the Company, or his designated representative or representatives, either party may submit the grievance to Charles O. Gregory, as arbitrator, whose decision shall be final and binding on all parties involved.

60. The above grievance procedure shall not preclude the steward from discussion with the foreman the application of the agreement in those cases where the Union and not the employe is aggrieved or where the aggrieved employe refuses to present his grievance.

When a settlement is arrived at, at any stage of these procedures, such a settlement shall be final and binding on all parties concerned. Settlements beyond the fourth step shall be in writing.

Military Clause

61. An employe who leaves a position other than a temporary one to enter the military service under The Selective Service Act or to enlist in the armed forces of the [fol. 429] United States or in the American Red Cross will be reinstated upon presentation of the certificate showing that he has satisfactorily completed his period of service, if he is still qualified to perform the duties of such position and if he makes application for re-employment within forty (40) days after being relieved from active duty or service.

62. The Seniority established by those employes entering war services will be protected, and for seniority and vacation purposes they will be given credit for war service. It is understood that no employe will be granted vacation pay while in war service.

63. While it is the Company's intention to re-employ those hired during the war period who subsequently enter war service, the Company's first obligation is to reinstate all of its regular employes upon their return. However, the Company will endeavor so far as possible to provide em-

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ployment for all of its employes upon their return from war service.

Miscellaneous Provisions

64. Union notices may be posted on designated bulletin boards in the dressing rooms, subject to the approval of the plant superintendent as to contents.

65. Any working conditions now in effect and not covered by this agreement, or not within the exclusive province of the Company as set forth in Paragraph 10, will remain in effect unless changed by collective bargaining.

66. Nothing in this agreement shall require the Company or the Union to take any action which shall be unlawful by reason of any applicable present or future state or federal statute.

67. When employes are absent on account of disability due to sickness or non-compensable accident and when such absences and their continuation are supported by acceptable medical evidence, part wage payments shall be made based on length of service according to the following schedule:

Absence due to sickness or non-compensable accident.

Service required, one year continuous.

Waiting Period, 1 to 9 years—one week. 10 years and up—none.

Amount of payment, one-half wages. Part wages are to be computed on a basic work week of forty hours.

Extent of payment, two weeks' half wages for each year of continuous service during any current 12-month period.

[fol. 430] 68. When a production standard is set and approved for use, the Company shall continue its practice of guaranteeing that there shall be no change in the standard unless

(1) It is found that through error insufficient credit is being given, in which case immediate correction shall be made, or

(2) The operation is changed so that the amount of work required to perform the job is changed, in which case time studies shall be made and a proper standard set covering the new method.

In no case shall an approved standard be reduced when there is no change in the job.

When a standard is changed under (2) above, it is understood that except in cases of errors in the previous standard, the new standard will permit the same opportunity for earning Premium as existed under the original standard.

When any changes in standards are made or when standards are applied to a new operation, the foreman shall inform the Union steward of the new production standards.

When an operator leaves his regular work on standards and is assigned to work with which he is unfamiliar, a record of the time and production spent on his regular work will be made. Any premium earned up to the time he leaves his regular job will be protected against loss because of lower output on the unfamiliar or different work.

Term

69. As to all matters not in dispute, this contract shall take effect as of August 11, 1943, except as otherwise provided herein. As to matters in dispute, the effective date shall be the time finally agreed upon by the parties hereto or ordered by the War Labor Board. This contract shall remain in effect until August 11, 1944 and from year to year thereafter, subject to reopening by either party on written notice mailed at least thirty (30) days prior to August 11 of any year. Provided that either party may reopen the provisions of this contract pertaining to wages or wage rates once during a contract year, on written notice mailed at least thirty (30) days prior to the date [fols. 431-432] on which it is requested that negotiations commence.

December 14, 1943.

Swift and Company, by (s.) J. E. Wilson. United Packinghouse Workers of America by (s.) Lewis J. Clark, (s.) Edw. F. Roche, (s.) Philip Weightman.

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[fol. 433] EXHIBIT I

Description of Bargaining Units

G. H. Hammond Plant, Chicago, Illinois

All production and maintenance employes, excluding office employes, general superintendent, division superintendents, foremen, assistant foremen, standards department employes, sales manager and salesmen and scalers in the sales department time and employment office employes, plant protection (police, watchmen, and fire hall employes), railroad yard clerk, plant clerks, salaried scalers, regular dock checkers, beef grader, medical office employes, draftsmen, brickmason, chauffeurs and hot beef scaler.

Chicago, Illinois Plant

All production and maintenance employes, excluding the superintendent, assistant superintendent, division superintendents, general foremen, foremen, foreladies, full time assistant foremen, full time plant clerks, straight time scalers and checkers, watchmen, police force, truck drivers, brickmasons, general office pay roll, schochters and employes of the superinten-ent's office, analysis committee, employment office, standards department and time office.

Omaha, Nebraska Plant

All hourly paid production, maintenance, plant clerks, scalers, and cafeteria employes and all operating engineers, oilers, temperature men and their helpers or apprentices and the city and rural truck drivers, but excluding general office personnel, the superintendent, division superintendents, foremen, assistant foremen, working foremen, chief engineer, standards department employees, the plant protection force, salaried plant clerks and scalers, laboratory workers, timekeepers, employment office personnel, medical department employees, salesmen, and employes of the company working in its wholesale market.

Plankinton Packing Company, Milwaukee, Wisconsin

All production and maintenance employes, including wholesale market operators and company inspectors, but excluding clerical workers, supervisory employes, watchmen, and fire prevention employes.

Los Angeles, California Plant

All production and maintenance employes, including employes in the feed yard, garage, Formay plant, soap plant, gas plant, engine room, drum house, and service department, truck drivers and packing and shipping employes, but excluding deputized watchmen, office and clerical workers, wherever located, all supervisory employees having the authority to fire and/or hire, foremen, subforemen, time-study men, timekeepers and salesmen.

Sioux City, Iowa Plant

All production and maintenance employes excluding specifically: The superintendent, 2 division superintendents, the master mechanic, 5 general foremen, 16 foremen, 13 [fol. 434] assistant foremen, the salesmen and general office employes, the standards department employes, the time office employes, the plant clerks, the plant protection force, the nurse, the chef, the matron, the bricklayer, and the automobile mechanic.

Denver, Colorado Plant

All production and maintenance employes, exclusive of foremen, assisstant or working foremen, watchment, general office employes, standards department employes and plant department clerks and dock checkers.

Iowa Packing Company Plant, Des Moines, Iowa

All hourly paid production and maintenance employes, including storage employes and truck drivers, but excluding all general office and superintendent's office employes, medical department employes, time and employment office employes, credit union and snack employes, standards department employes, p-licement and watchmen, superintendent, division superintendents, general foremen, foremen, assistant foremen, gang leaders, salaried clerks, and salaried scalers.

Van Wagenen & Schickhaus, Newark, New Jersey

All production and maintenance employes, exclusive of managerial, office employes, salesmen, teamsters, chauffeurs, watchmen, scalers, checkers and plant clerical employes.

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White Provision Company Plant

All maintenance and production employes, including truck drivers and excluding clerical and office employes, supervisors, salesmen, and watchmen.

Evansville, Indiana Plant

All production and maintenance employes, excluding office employes, supervisory employes (1 superintendent, 1 chief engineer, and master mechanic, 11 foremen, 4 assistant foremen), standards department employes, superinten-ent's office employes, personnel office employes, and plant protection force (watchmen).

Harrison-Kearny, New Jersey Plant

All production and maintenance employes, exclusive of office workers, supervisory staff, regular truck drivers and shochtim.

United Dressed Beef Company Plant, New York, N. Y.

All production and maintenance employes, shipping clerks, shipping typists, shipping scalers and shipping checkers, excluding supervisory and office employes, shochtim, plant clerks, scalers and truck drivers.

John P. Squire Company and North Packing and Provision Company Plant, Cambridge, Massachusetts

All regular hourly paid production and maintenance [fol. 435] employes, excluding executives and supervisory employes, soap works employes, restaurant employes, storeroom employes, employes engaged in employe sales, standards employes, salesmen, office and clerical employes, watchmen and outside truck drivers.

New England Dressed Meat & Wool Company Plant, Somerville, Massachusetts

All regular hourly paid production and maintenance employes, and truck drivers excluding executives, supervisory, restaurant, storeroom, standards, office and clerical employes, salesmen, plant clerks and watchmen.

Jersey City Plant

All production and maintenance employes, exclusive of superintendent, chief engineer, master mechanic, general foremen, foremen, assistant foremen, clerks, receiving office employes, time and employment office employes, storeroom and superintendent's office employes, standards department employes, plant protection employes (watchmen, box pullers, fire marshall), service salesmen, packing house market employes, general office employes, commissary employes, and matron.

[fol. 436] EXHIBIT "A"

There remains an issue between the parties as a result of their negotiations for renewal of their master agreement, the points set forth herein.

The parties hereby reaffirm their previous agreement that as to such points still in issue, which were covered by the master agreement. The mast- agreement shall remain in full force and effect and shall control the relationship between the parties until such issues are finally resolved either by agreement or by Order of the War Labor Board, or some other property designated agency.

(1). Section 5 and 6, the Company demands a change in the master agreement:

> "5. In accordance with the Directive Order of the National War Labor Board in Case No. 186 and as a result thereof all employes who fifteen (15) days after the signing of this Agreement are members of the Union in good standing in accordance with the constitution and by-laws of the Union, and all those employes who may thereafter become members shall, during the life of the Agreement, as a condition of employment, remain members of the Union in good standing. The Company and the Union agree that the sixteen plants mentioned in Paragraph 2, a notice, a form for which has been agreed to by the parties, be given to the employes at said sixteen plants promptly after the signing of this Agreement."
>
> 6. The Company, for said employes, shall deduct from the first pay of each month the union dues for the preceding month and promptly remit the same to

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the Financial Secretary of the Local Union. The initiation fee of the Union shall be deducted by the Company and remitted to the Financial Secretary of the Local Union in the same manner as dues collections. Notwithstanding anything to the contrary in the constitution or by-laws of the Union, deduction by the Company of said Union dues and initiation fee as provided above shall fulfill the requirements of this section as to maintenance of membership in good standing of Union members. The Union shall notify the Company the name of each such Financial Secretary and the address to which such dues collections and initiation fees shall be sent. Such notification shall bear the signature of the President and Recording Secretary of the Local Union and shall be impressed with the seal of the Local Union. In the event of any change of the Local Financial Secretary, the Company shall be notified of such change by the same method as provided above.

Union's Position

Union is opposed to another fifteen (15) day escape clause, and wants no change in Section 6.

(2). Section 7, the company demands that the language of the master agreement be changed to read as follows:

"The Union shall promptly furnish the Company a notarized list of members in good standing fifteen (15) days after the date of the signing of this agreement. If any employe named on that list asserts that he withdrew from membership in the Union prior to that date and any dispute arises, the assertion or dispute shall be adjudicated by the Arbitrator named in Paragraph 59 of this Agreement, whose decision shall be final and [fol. 437] binding upon the Union and the employe.

"The Union agrees that neither it nor any of its officers or members will intimidate or coerce employes into membership in the Union. If any dispute arises (as to whether there has been any violation of this pledge or whether any employe affected by this clause has been deprived of good standing in any way contrary to the constitution and by-laws of the Union) the dispute shall be regarded as a grievance and submitted to the grievance machinery and, if necessary, to the final

determination of the Arbitrator named in Paragraph 59.

"The Company and the Union agree that, in the event there is any strike, stoppage, slow-down or suspension of work on the part of the Union or its members at any of the plants covered by this Agreement prior to the exhaustion by the Union or its members of the grievance procedure set forth in Paragraph 59 of this Agreement that the Union maintenance provided in Paragraph 5 of this Agreement and check-off provided in Paragraph 6 of this Agreement shall cease, immediately as to such plant involved in such strike, stoppage, slow-down, or suspension of work."

Union's Position

Union is opposed to that part of the Company's demand implying another fifteen (15) day escape clause and providing that maintenance of membership and check-off shall automatically be lost in the event of a strike, stoppage, slow-down, or suspension of work in any of the Company's plants represented by the Union.

(3) The Union demands an additional section to be added to "Hours of Work" providing that time and one-half (1½) will be paid for the sixth consecutive day of work and double time for work performed on the 7th consecutive day. For purposes of computing the sixth and seventh consecutive day, employes shall be credited with the day worked as permitted by the various interpretations of Executive Order 9240.

Company's Position

The Company is opposed to the payment of time and one-half (1½) for the sixth day worked and have suggested certain provisions which are incorporated in the agreement to which this is attached and found in Section 12.

(4) "Wages," the Union demands the following:

A. In order to effectuate the War Labor Board's Order of February 8, 1943, and to eliminate inequalities that represent manifest injustices and cases of extreme hardship as between the packing industry and other war industries, each employe shall receive an increase over his present rate of at least 10¢ per hour.

[fol. 438] B. In order to further effectuate the Board's Order of February 8, 1943, and to implement

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the present contractual provisions the parties agree to a job evaluation of all jobs and the establishment of job classifications and rates with respect thereto for the purpose of eliminating intra- and inter-plant inequalities. Such adjustments as may result in the application of this provision shall be retroactive to August 20, 1942.

C. Employes who are required to change clothes or otherwise prepare themselves or the equipment used by them before actually starting work at their jobs and employes who are required to change clothes or care for equipment after the job has been completed will be paid at their regular hourly rate or average piece work earnings, whichever is the greater, for all time consumed in such preparation.

D. The Company agrees to furnish and keep in proper working condition without cost to employes all wearing apparel and equipment necessary in the performance of the employes' duties.

Company's Position

The Company is opposed to any changes or additions set forth herein.

(5) The Union demands change in Section 27 of the present master agreement to read as follows:

Employes required to perform work on jobs paying different rates of pay shall be paid for all time spent at the highest rate of any of the jobs performed.

Company's Position

The Company proposes the following:

"27. An employee will receive the higher rate,

(1) When he is assigned to a job having a higher authorized rate than his regular rate.

(2) When he is assigned to a job (not his regular assignment) having a rate lower than his regular rate. This will not preclude an employe from volunteering to work on a lower rated job as a means of increasing his income.

(3) When he is assigned to a combination job. A combination job is one that is made up of two or more

jobs on which there are authorized rates, and which are performed within the same work cycle.

"An employe who performs, as his regular assignment, more than one distinct and separate job, not a combination job as defined herein, shall be paid according to the existing practice at the plant, either:

A. For the time spent on each job at the rate of each job (multiple rate) or

B. A weighted rate arrived at by taking into consideration the time spent on each job and the rate [fol. 439] of each job."

(6). The Union demands change in Section 28—Guarantee Time, to read as follows:

28. The Company guarantees to each employe at least forty (40) hours' pay in each week of employment, subject to the following rules for eligibility:

(a) Except as hereinafter provided, all hourly paid employes are guaranteed forty (40) hours' pay in weeks when they are present each day for the full time worked by the gang in which they are employed. In the application of this provision, the guarantee time shall be on the basis of work performed in the employe's own gang. Employes who work in other than their own gang shall receive additional compensation at the highest rate, this to be in addition to the regular forty (40) hour guarantee in their own department.

(b) An exception to the above rule occurs in the case of gangs hired on a day basis and normally providing employment for a period of less than six (6) consecutive working days; examples, cured hide take-up, snow shovelers, supply unloaders, wreckers, etc.

(c) An employe who is absent from work on any day that his gang works shall have his forty (40) hour guarantee reduced by the number of hours that the gang worked on the day when he was absent.

(d) An employe who is tardy or is excused from work for part of a day for all personal reasons shall have his forty (40) hour guarantee reduced by the number of hours of work which he missed by such absence.

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(E) An employe who is employed after the first of the payroll week shall be guaranteed that fraction of forty (40) hours which the number of days remaining of the payroll week is of six. The practice of raising a gang after the third day in the payrool week should be avoided if the additional men are to be used only for a day or two.

(f) An employe starting work on Saturday in a department where the payroll closes on Saturday and which regularly shuts down at noon for the week shall not rereive any excess time even though the gang may be paid excess time for the week.

(g) No employe shall be laid off until the end of the payroll week, unless the gang has made forty (40) hours at time of reduction or else paid for forty (40) hours.

(h) The application of the forty (40) hour guarantee shall be the same on holiday weeks as all others provided however that employes shall be paid at the rate of time and one-half (1½) for all hours worked in excess of thirty-two (32) during such holiday weeks.

Company's Position

The Company objects to any change in the present plan, and because of the change in the work week by Section 12, whereby the possibility of a payroll closing on Saturday [fol. 439a] is eliminated, that the words "where the payroll closes on Saturday and" should be eliminated from Section 28 (f) of the contract.

(7) The Union demands that all changes resulting from these demands shall be retroactive to August 11, 1943, except as may otherwise be provided.

Company's Position

The Company objects to this proposal and asks that such changes be effective as of the date that they are resolved.

United Packing House Workers of America, by —— ——.

Swift and Company, by —— ——.

[fol. 440] EXHIBIT No. 9

NATIONAL WAR LABOR BOARD

In the Matter of: SWIFT & COMPANY and UNITED PACKINGHOUSE WORKERS OF AMERICA, CIO

Case No. 111-5544-D

The company and the union in the above case have engaged in collective bargaining as ordered by the Board in sections 3, 4, 5, 6, and 35 of the Directive Order of February 20, 1945, and section 4 of the Supplementary Directive Order of the same date, and subject to the company's petition for price relief and without waiving that petition, they have reached the following agreement:

1. In compliance with section 3 of the Directive Order of February 20, 1945, it is agreed that a total of 12 minutes per day is a fair and reasonable time for the changing of clothes before and after work which is to be paid to each employe in the bargaining units at each plant at his regular hourly rate of pay, retroactive to August 11, 1943, and that such time is to be considered as work time for all purposes under the Master Agreement.

2. In complete compliance with subparagraph A of sections 5 and 6 of said Directive Order and in lieu of actually furnishing the articles required by said section, it is agreed that each employe in the bargaining units at each plant, who does any work in the regular work week, will be paid 50¢ per week, retroactive to August 11, 1943.

[fol. 441] 3. In complete compliance with subparagraph B of sections 5 and 6 of said Order, it is agreed that knives, steels, whetstones, triers, meat trimmers' hooks, and overhauling hooks will be furnished to those employes using them, but that this provision will not be retroactive. These tools are to be furnished in addition to all heavy tools and safety devices now being furnished by the Company.

4. In further compliance with section 4 of said Order, it is agreed that those employes using tools and equipment furnished by the company will be paid for the time spent preparing and repairing those tools and equipment as regular work time which will be scheduled or handled by the foreman, the same as any other assignment of work for

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which he is responsible, but that this provision will not be retroactive.

5. In compliance with section 4 of the Supplementary Directive Order of February 20, 1945, the parties have made the following agreement which corrects and adjusts any and all wage rate inequalities or inequities covered by said Supplementary Directive Order:

A. That an average of 2¢ per hour be paid to the employes in the bargaining units at each of the plants covered by the Master Agreement between the parties, retroactive in accordance with the provisions of paragraph 4 J of said Board's Supplementary Directive Order. Such increase at each plant shall not increase the wage rates in said plant by more than an average of 2¢ per hour for all the employes within the bargain- [fol. 442] ing unit as of May 31, 1945.

B. That each of the authorized hourly rates of the employes in the bargaining unit at the White Provision Company plant in Atlanta, Georgia, be increased 5¢ per hour, retroactive to February 8, 1943.

C. That each of the authorized hourly rates of the employes in the bargaining unit at the Moultrie, Georgia plant be increased 5¢ per hour, retroactive to September 28, 1944.

D. That each of the authorized male and female hourly rates of the employes in the bargaining unit at the H. L. Handy plant in Springfield, Massachusetts, be increased 2½¢ and 3¢ per hour respectively, retroactive to March 7, 1944.

E. That each of the authorized male and female hourly rates of the employes in the bargaining unit at the Sperry & Barnes plant in New Haven, Connecticut, be increased 2½¢ and 4¢ per hour respectively, retroactive to June 12, 1944.

F. That each of the authorized male and female hourly rates of the employes in the bargaining unit at the South St. Paul, Minnesota plant be increased 2½¢ and 3¢ per hour respectively, retroactive to September 29, 1944.

G. The geographical differentials as modified by this agreement shall remain in effect during the life of the agreement, without prejudice to the right of either party to seek a modification of such differentials at the [fol. 443] expiration of the agreement, which modifications, if any are finally determined upon, are not to be effective prior to the expiration date of this agreement.

The WLB Meat Packing Commission will immediately undertake an inquiry into the historical background and the relevant facts surrounding the original establishment of such differentials and any subsequent modifications thereof. In conducting such inquiry, the Commission shall hold hearings, call such witnesses as it or the parties desire, and offer the parties full opportunity to present relevant evidence and argument. At the conclusion of its inquiry the Commission shall make a report on the facts, without recommendations or proposal of standards, and transmit copies thereof to the parties and the Board for such use as the parties or the Board may desire to make of it. The report of the Commission shall be based upon the factual record made before the Commission by the parties and such other statistical or historical data of an official character as the Commission deems necessary.

6. The parties agree that the Master Agreement executed December 14, 1943, plus the changes ordered by the Board in its Directive Order of February 20, 1945, and the agreement embodied herein, shall constitute the new Master [fols. 444-451] Agreement between the parties and shall remain in full force and effect until August 11, 1946, provided, however, that this is without prejudice to resumption by the Board of its consideration of the demand for a general wage increase under the procedure that might then be appropriate if there is any change in the wage stabilization policy.

7. The retroactive provisions of paragraphs 1 and 2 of this agreement shall not apply to the Moultrie, Georgia plant, the H. L. Handy plant in Springfield, Massachusetts, and the Sperry & Barnes plant in New Haven, Connecticut, but as to those plants said paragraphs shall be retroactive to the dates of certification of the union by the National

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Labor Relations Board which are respectively, September 28, 1944, March 7, 1944, and June 12, 1944.

8. The agreement stated in paragraphs 1 to 7 inclusive above is an agreement in its entirety and was negotiated by the parties as such. The parties are not in agreement as to each of said paragraphs or subparagraphs independent of the agreement reached in the other paragraphs or subparagraphs. In the event that the Board fails to approve this agreement the parties shall have the privilege of continuing their negotiations.

Accordingly, the parties ask the Board's approval of the foregoing agreement in its entirety.

Swift & Company, by (S.) J. E. Wilson. United Packinghouse Workers of America, CIO, by (S.) Lewis J. Clark, by (S.) Philip Weightman.

Chicago, Illinois, June 1, 1945.

[fols. 452-454a] EXHIBIT No. 17

NATIONAL LABOR RELATIONS BOARD

Thirteenth Region

Midland Building, 176 West Adams Street, Chicago 3, Illinois.

July 13, 1945.

Plankinton Packing Company, 230 South Muskego Avenue, Milwaukee, Wisconsin.

In the Matter of Plankinton Packing Company and Amalgamated Meat Cutters & Butcher Workmen of North America

Case No. 13-R-3188

GENTLEMEN:

This is to advise you that a petition has been filed by the union in the above-entitled case, alleging that a question concerning representation exists among certain employees of your company.

The petitioner claims that the following employees constitute an appropriate unit: All packing house production

workers, except for foremen and superintendents and office employees and watchmen.

Please notify us whether or not there are any other labor organizations who may claim to represent any of the employees in the above unit. If there are collective bargaining agreements in effect covering any of the above employees, please furnish two copies of such agreements for our files.

The case has been assigned to Field Examiner Donald J. Martin for investigation. If you have any questions in connection with the matter, please communicate with him at this office.

Very truly yours, (S.) George J. Bott, Regional Director.

[fol. 455] Before the Wisconsin Employment Relations Board

William Stokes, Complainant,

vs.

Plankinton Packing Company, a Corporation, and United Packing House Workers of America, Respondents

Case II

No. 1017 Ce-166

Decision No. 1147

Appearances:

Mr. David Beznor, Attorney, for the complainant.
Mr. John Staley, Attorney, for the respondent company.
Mr. A. W. Richter, Attorney, for the respondent union.

Findings of Fact, Conclusions of Law and Order

The above entitled matter having come on for hearing on the 10th day of September, 1945, before the Wisconsin Employment Relations Board, the full Board being present; the complainant being present in person and represented by its attorney, David Beznor, and the respondent company appearing by its attorney, John Staley, and the respondent union appearing by its attorney, A. W. Richter; testimony being taken and the Board being fully advised

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in the premises, does hereby make and file the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. That the complainant, William Stokes, is a citizen and a resident of the City and County of Milwaukee, State of Wisconsin.

2. That the respondent, Plankinton Packing Company, is a corporation duly organized and existing under the [fol. 456] laws of the State of Wisconsin and having its principal place of business at 230 South Muskego Avenue, in the City and County of Milwaukee, State of Wisconsin.

3. That the respondent, United Packing House Workers of America, C. I. O., Local No. 50, is a voluntary labor organization, affiliated with the Congress of Industrial Organizations.

4. That on or about the 20th day of February, 1945, the National War Labor Board, in the settlement of a dispute then pending before such Board involving the respondent Company and the respondent Union, issued a Directive Order which provided for Union security. By the terms of such Directive, all employes, who on March 9, 1945 are members of the Union in good standing in accordance with its constitution and by-laws and all members who become members after that date, shall as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective bargaining agreement in which this provision is incorporated or until further order of the Board.

5. That the complainant, William Stokes, was at the time that the Directive Order referred to in Finding Number 4 above was issued, a member of the respondent Union, in good standing. That prior to the 9th day of March, 1945 and on or about the 6th day of March, 1945, the complainant, Stokes, pursuant to the provisions of such Directive, tendered to the respondent Union, in writing, his resignation from such Union. That a copy of such resignation was mailed to the respondent employer.

6. Immediately after receipt by the union officers of the letter of resignation from the complainant Stokes, the employes employed by the respondent employer in the

department in which Stokes was employed, all of whom were members of the respondent union, commenced a course of conduct intended to coerce and intimidate the complainant, Stokes, and to cause his loss of employment for the reason he had exercised his right to refrain from membership in the respondent union. That at the same time officers, agents and members of the respondent union [fol. 457] began a course of conduct intended to coerce, intimidate and induce the respondent employer to discharge the complainant, Stokes, for the reason that Stokes had exercised his right to refrain from membership in such union. That such course of conduct consisted of calling names, engaging in work stoppages, prevailing upon the employe with whom Stokes had been riding to and from work to discontinue such arrangement; and by requesting and attempting to induce the employer to discharge the complainant Stokes.

7. That on the 9th day of May, 1945, at the request of the respondent Union, the respondent employer discharged the complainant as the result of the coercion, intimidation, and inducement of the respondent Union and thus interfered with the right of the complainant, Stokes, to refrain from membership in the respondent Union.

Upon the basis of the above and foregoing Findings of Fact, the Board makes the following

Conclusions of Law

1. That the United Packing House Workers of America, C. I. O., Local No. 50 committed an unfair labor practice by coercing and intimidating William Stokes in the exercise of his right to refrain from membership in such organization, and by coercing, intimidating, and inducing the respondent employer to interfere with the right of complainant, Stokes, to refrain from membership in such organization, and by inducing the respondent employer to discharge Stokes from its employment.

2. That the respondent Plankinton Packing Company, committed an unfair labor practice by interfering with the right of William Stokes to refrain from membership in the respondent Union by discharging said Stokes at the request of and pursuant to the coercive tactics of the respondent Union.

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Upon the basis of the foregoing Findings of Fact and Conclusions of Law, the Board, under and pursuant to Section 111.07 of the Wisconsin Statutes, makes the following

[fol. 458] ORDER

1. It is Ordered that the respondent, United Packing House Workers of America, C. I. O., Local No. 50, shall immediately cease and desist from engaging in any activities such as name-calling, work stoppages or other coercive or intimidatory activities for the purpose of interfering with the right of William Stokes or any other employe of the respondent, Plankinton Packing Company, to refrain from membership in the respondent Union.

2. It Is Further Ordered that the respondent, Plankinton Packing Company, immediately cease and desist from interfering with the rights of any of its employes to refrain from membership in the respondent Union.

It Is Further Ordered that the respondent Plankinton Packing Company take the following affirmative action which the Board finds will effectuate the policies of the Wisconsin Employment Relations Act:

(a) Offer to William Stokes immediate and full reinstatement to his former position without prejudice to the rights and privileges he previously enjoyed.

(b) Make whole William Stokes for any loss of pay he may have suffered by reason of the employer's discrimination against him by payment to him of the sum of money equal to the amount he normally would have earned as wages during the period from the time of his discharge to the date of the employer's offer of reinstatement, less any earnings, and unemployment compensation he may have received during that period of time.

(c) Immediately post in conspicuous places at its place of employment, notice to all of its employes that it will cease and desist as above ordered.

It Is Further Ordered that the respondent, United Packing House Workers of America, C. I. O., Local No. 50, immediately post in conspicuous places, and particularly upon all bulletin boards provided by the employer for the

use of the union, copies of the notice attached hereto, marked Exhibit "A." Copies of said notice shall be [fol. 459] prepared by the respondent union, signed by its officers and are to be posted immediately upon receipt of this order and maintained for thirty (30) consecutive days thereafter in conspicuous places.

It Is Further Ordered that the respondents, Plankinton Packing Company and United Packing House Workers of America, C. I. O., Local No. 50, notify the Wisconsin Employment Relations Board in writing within five (5) days from the receipt of a copy of this order, what steps the respondents have taken to comply therewith.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of December, 1946. Wisconsin Employment Relations Board, by (S.) L. E. Gooding, Chairman; J. E. Fitzgibbon, Commissioner.

[fols. 460-461] EXHIBIT "A"

Pursuant to an order of the Employment Relations Board, and in order to effectuate the policies of the Wisconsin Peace Act, we hereby notify all employes of the Plankinton Packing Company that;

The United Packing House Workers of America, C. I. O., Local No. 50, will not in any manner interfere with the rights of any employes of the Plankinton Packing Company who do not desire to become members of such organization; and that the union and all of its members will not coerce, intimidate or induce, or attempt to coerce, intimidate or induce in any manner the Plankinton Packing Company from interfering with the right of any of the employes of such company to refrain from membership in this union; and particularly will not engage in name-calling of any employes who are not members of such organization, nor in work stoppages of any kind for the purpose of inducing, or attempting to induce the Plankinton Packing Company to discharge or in any other manner discriminate against any employes of such company.

United Packing House Workers of America, CIO, Local No. 50. By —— ——, President. By —— ——, Secretary.

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[fol. 462] BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

[Title omitted]

PETITION FOR RECONSIDERATION

Now comes the Plankinton Packing Company, a corporation, respondent herein, and, without prejudice to its position that this Board has no jurisdiction, petitions the

(1) to reconsider its Findings of Fact, Conclusions of Law and Order herein issued on December 6, 1946, and

(2) to set aside and amend said Findings, Conclusions and Orders, upon its own motion, in the following respects:

I—The Order to Reinstate Plaintiff and the Order to Make Plaintiff Whole Should be Set Aside

The Board is without power to order reinstatement of the complainant with or without back pay for the following reasons:

(A) Complainant is not an employe of the company.

The Board's power to order reinstatement and grant back pay to reinstated persons is granted in Section 111.07 (4) of the Employment Relations Act which reads in part as follows:

> "Final Orders may dismiss the charges or require the person complained of to cease and desist from the [fol. 463] unfair labor practices found to have been committed . . . and require him to take such affirmative action, including reinstatement of employes with or without pay as the Board may deem proper."

The Board is thus authorized to order the reinstatement only of "employes"; it cannot compel the reinstatement of any person not an "employe."

Section 111.02 (3) defines the term "employe" to include persons who have ceased working for the accused employer provided:

(1) that such work ceased "solely as a consequence of, or in connection with any current labor dispute or

because of any unfair labor practice on the part of an employer," and (2) that such person "has not obtained regular and substantially equivalent employment elsewhere."

The record makes it plain without any doubt whatever that complainant is not an employe within the above definition. In the first place he has obtained regular and at least substantially equivalent employment with an employer other than the Plankinton Packing Company. Complainant testified at the hearing that he has a steady job with a rate of pay of ninety cents (90¢) per hour, whereas the record shows that his rate at the respondent's plant was eighty-two cents (82¢) per hour, or eight cents (8¢) per hour less than he is now earning. His present position is thus not only substantially equivalent to, but materially better than the job held by him at respondent's plant. On this ground alone he is not an "employe" within the meaning of the Employment Relations Act.

[fol. 464] In the second place it cannot reasonably be inferred from the record, and the Board did not find as a fact, that complainant's discharge was *solely* as a consequence of or in connection with the alleged unfair labor practice. Such was plainly *not* the fact. For a long period of time complainant engaged in a deliberate, disagreeable and aggravated course of misconduct which included threats to other employes, the repeated use of vile, abusive language toward other employes. This record was cause for discharge regardless of any question of membership in a labor organization, and would have resulted in complainant's discharge from the service of an responsible employer.

In the absence of any finding, or basis for finding, that complainant was discharged *solely* by reason of the alleged unfair labor practice it appears of record that he is not an "employe" and cannot, therefore, be ordered reinstated, with or without back pay, by the Board.

(B) Reinstatement will not effectuate the purposes of the Act

Even if the complainant were an "employe" the Board would not be warranted in ordering his reinstatement on the facts of this case. It is the purpose of the Employment

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Relations Act to promote industrial harmony, to create conditions favorable to industrial peace, and to encourage the uninterrupted production of goods and services. A reading of the record in this case discloses that the re-entry of the complainant into the company's plant will tend to defeat rather than to accomplish these purposes. His re-employment will likely be the signal for a return to the intolerable conditions which prevailed before his discharge. There will be the same name calling, the same threats, the same pressure, as before. It is not in the interests of indus-[fol. 465] trial harmony and *and* increased production to deliberately recreate a situation of this kind, and the company strongly protests against it. There was no reasonable solution to the problem which faced the company other than complainant's discharge. As a result of that action, he, the company, and the company's other employes are all better off. The present state of peace should not be disturbed.

II—The Order to Cease and Desist and the Order to Post Notices Should Be Set Aside

The company respectfully submits that the Board erred in its findings that the company discharged the complainant under pressure from the C. I. O. and thereby interfered with his right to refrain from membership in that organization. As has been pointed out above, and as the record demonstrates, there was abundant cause for discharge in complainant's misconduct, and such misconduct was in fact the sole reason for the termination of complainant's employment. The Board should find this to be a fact.

It follows that the Board was in error in concluding that an unfair labor practice was committed by the company, and the Order to cease and desist, and the Order to post notices should, therefore, be set aside.

III—All of the Board's Orders Directed to the Company Should Be Set Aside for Lack of Jurisdiction

The company again respectfully urges upon the Board its position that the Board is without jurisdiction in view of the fact that the company is engaged in Interstate Commerce and the National Labor Relations Board has by designating a certified bargaining representative assumed jurisdiction over the subject matter herein involved.

The Board's attention is directed to the authority cited in the company's brief submitted herein on November 20, 1945 on this point, a copy of which is submitted with this Petition.

[fol. 466] The company takes no position with respect to the Board's jurisdiction to enter Orders binding upon the other party to the proceeding, with respect to matters not covered by the National Labor Relations Act. Under Section 111.07 (6) the Board may "on its own motion, set aside, modify or change any order, findings or award (whether made by an individual commissioner, an examiner or by the Board as a body) at any time within twenty (20) days from the date thereof if it shall discover any mistake therein."

The Board's Order of December 6, 1946 requires the company to notify the Board in writing within five (5) days from the receipt of said Order, what steps have been taken to comply therewith.

The company hereby informs the Board that it has taken no action whatever with respect to the matters involved in this case, and will take no such action pending disposition of this Petition for reconsideration.

Respectfully submitted, A. R. Curtis, William N. Strack, John P. Staley, Arthur R. Curtis, Attorneys for Plankinton Packing Company.

[fols. 467-471] Before the Wisconsin Employment Relations Board

[Title omitted]

Order Denying Petition for Reconsideration

The Wisconsin Employment Relations Board having heretofore on the 6th day of December, 1946, made and filed its Findings of Fact, Conclusions of Law and Order, and the respondent, Plankinton Packing Company having filed a petition for reconsideration; and the Board having considered such petition and being fully advised in the premises;

Now, therefore, it is

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ORDERED

That the petition of the petitioner requesting a reconsideration of the Board's Findings of Fact, Conclusions of Law and Order, be, and the same hereby is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of January, 1947.

Wisconsin Employment Relations Board, by (S.) L. E. Gooding, Chairman; (S.) J. E. Fitzgibbon, Commissioner.

[fol. 472] IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

NOTICE OF APPEARANCE AND STATEMENT OF POSITION OF WISCONSIN EMPLOYMENT RELATIONS BOARD

To David Beznor, 710 North Plankinton Ave., Milwaukee, Wisconsin, Attorney for William Stokes; John Staley, Union Stockyards, Chicago, Illinois; Quarles, Spence & Quarles 828 North Broadway, Milwaukee, Wisconsin, Attorneys for Petitioner; A. W. Richter, 152 W. Wisconsin Ave., Milwaukee, Wisconsin, Attorney for United Packing House Workers of America, CIO, Local #50:

Please take notice that the respondent, Wisconsin Employment Relations Board, appears in the above entitled matter by its attorneys, John E. Martin, Attorney General, Stewart G. Honeck, Deputy Attorney General, and Beatrice Lampert, Assistant Attorney General, and that a copy of all subsequent pleadings, documents, notices or other papers subsequent to the summons and petition for review are to be served on such attorneys at their offices in the State Capitol, Madison 2, Wisconsin.

[fols. 473-483] Take further notice that the position of said respondent is as follows:

That the findings of fact, conclusions of law and order which the petitioner seeks to review and set aside are not void or unlawful for any of the reasons set forth in the petition for review or for any other reason and alleges that the order complained of is a valid and lawful order.

Wherefore this respondent prays that the petition for review herein be dismissed.

Dated at Madison, Wisconsin, this 17th day of January, 1947.

John E. Martin, Attorney General; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General, Attorneys for Wisconsin Employment Relations Board.

[fol. 484] In Circuit Court of Milwaukee County

[Title omitted]

Summons

The State of Wisconsin to the said Respondents:

You are hereby summoned to appear within twenty (20) days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid, and in case of your failure so to do, judgment will be rendered against you according to the demand of the Petition, of which a copy is herewith served upon you.

John E. Martin, Attorney General; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General, Attorneys for Wisconsin Employment Relations Board. Post Office Address: State Capitol, Madison, Wisconsin.

[fol. 485] In Circuit Court of Milwaukee County

[Title omitted]

Petition

Now comes the Wisconsin Employment Relations Board, the petitioner above named, by John E. Martin, Attorney General, Stewart G. Honeck, Deputy Attorney General and Beatrice Lampert, Assistant Attorney General, and for cause of action alleges and shows to the court:

1. That the Wisconsin Employment Relations Board, hereinafter referred to as the board, is and at all times men-

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tioned herein, was an administrative body created by Ch. 57 of the Laws of 1939 as amended by Ch. 515 of the Laws of 1939, Ch. 465, Laws of 1943 and chs. 424 and 504 of the Laws of 1945.

2. That the respondent, Plankinton Packing Company, hereinafter referred to as the employer, is a corporation duly organized and existing under the laws of the State of Wisconsin, having its principal place of business and usually transacting business in the City and County of Milwaukee, State of Wisconsin; and that said Plankinton Packing Company engages the service of employees for hire in the State of Wisconsin.

[fol. 486] 3. That the United Packing House Workers of America, C. I. O., Local #50, hereinafter referred to as the union, is a voluntary labor organization affiliated with the Congress of Industrial Organizations and that it usually transacts business in the County of Milwaukee, Wisconsin.

4. That William Stokes is an individual who resides in Milwaukee County, Wisconsin, and that prior to the 9th day of May, 1945 said William Stokes was employed by the Plankinton Packing Company to work for hire within the State of Wisconsin in a non-executive and non-supervisory capacity and not as an independent contractor.

5. That on or about the 12th day of July, 1945 said William Stokes filed a complaint with the board charging the above named respondents with having engaged in unfair labor practices within the meaning of sec. 111.06, Wisconsin Statutes, as more fully appears by the record of the proceedings of the board filed herein in the Circuit Court for Milwaukee County.

6. That after due notice and hearing upon said complaint, the board did on the 6th day of December, 1946, make and file its decision, findings of fact, conclusions of law and order with reference to said charges of unfair labor practices, a true and correct copy of which is hereto attached, marked Exhibit A and made a part hereof.

7. That copies of said decision, findings of fact, conclusions of law and order of the board, Exhibit A, were duly served upon the respondents above named; that said order since its issuance has been in full force and effect; neither

of the above named respondents has, within the time required in said order, notified the board in writing what steps they have taken to comply with the same; that the [fols. 487-493] board is informed and believes that the said respondents and each of them have failed and neglected to take any steps to comply with the terms of said order and allege that neither of said respondents has complied with either the cease and desist provisions of said order nor the affirmative action requirements and provisions thereof.

8. That the said board has caused to be certified and filed in this court its record in the proceedings entitled "William Stokes, Complainant, vs. Plankinton Packing Company, a corporation, and United Packing House Workers of America, Respondents, Case II, No. 1017 Ce-166, Decision No. 1147" all documents and papers on file in the matter, the pleadings and testimony upon which the order therein was entered and the findings and order of the board to which record reference is hereby made and the same is incorporated herein as if specifically set forth.

Wherefore the board prays that the court enter a judgment and decree confirming and enforcing all of the provisions of the order herein referred to, Exhibit A, and for such other relief as the facts and circumstances may warrant.

Dated January 17, 1947.

John E. Martin, Attorney General; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General, Attorneys for Wisconsin Employment Relations Board.

[fol. 494] In Circuit Court of Milwaukee County

[Title omitted]

Answer

Now comes the defendant, The Plankinton Packing Company, by its attorneys Quarles, Spence and Quarles, and in Answer to the Petition of the plaintiff herein, alleges and shows to the court as follows:

1. Admits the allegation contained in Paragraph 1, referring to the creation of the plaintiff Board;

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2. Admits the allegation contained in Paragraph 2, relating to the incorporation, address and business of this answering defendant;

3. Admits the organization and existence of United Packing House Workers of America, C. I. O., Local #50;

4. Admits that William Stokes is an individual and formerly resided in Milwaukee County, but denies information sufficient to form a belief with respect to the present address of said William Stokes; admits that prior to May 9, 1945 said William Stokes was employed by this answering defendant in a non-executive and non-supervisory capacity and not as an independent contractor;

5. Admits that on or about the 12th day of July, 1945, said William Stokes filed a Complaint with the plaintiff Board, charging an unfair labor practice against the co-defendant Union herein under Section 111.06 of the Wisconsin stat- [fol. 495] utes, but denies that said Complaint made any charge against this answering defendant;

6. Admits that after due notice a hearing was had upon the Complaint of said William Stokes before the plaintiff Board and that on the 6th day of December, 1946 said plaintiff Board filed its decision, findings of fact, conclusions of law and order with reference to same—a true and correct copy of which is attached to plaintiff's Complaint, marked Exhibit A;

7. Admits that said findings of fact, conclusions of law and order of the plaintiff Board were duly served upon this answering defendant, and admits that this answering defendant did not within the time specified in said order notify the Board in writing of its intention to comply with said order, but alleges that within the time provided therefor by said Act, this answering defendant petitioned the plaintiff Board for a review, which was denied, and that subsequent thereto and within the time prescribed by said Act, this answering defendant instituted an action in the Circuit Court of and for Milwaukee County in the nature of an appeal from the identical order referred to in plaintiff's Complaint herein; that the plaintiff appeared in said action, and said action is now pending in the Circuit Court of and for Milwaukee County.

8. Admits on information and belief that the plaintiff herein has caused to be certified and filed in this court its record in the proceedings entitled "William Stokes, Complainant, vs. Plankinton Packing Company, a corporation, and United Packing House Workers of America, Respondents, Case II, No. 1017 Ce-166, Decision No. 1147".

9. Further answering the Complaint of the plaintiff herein, the defendant Plankinton Packing Company alleges that:

(1) The plaintiff Board herein was without jurisdiction or power to make said order as to this answering defendant;

(2) That the Board acted in excess of its statutory authority or jurisdiction and in excess of its powers in making such order;

(3) That there is no evidence in the record warranting the Board to make the order hereinabove referred to;

[fols. 496-497] (4) That said order is arbitrary and capricious;

(5) That it appears without dispute in the record that said William Stokes has not suffered any loss or damage;

(6) That it appears without dispute in the record that William Stokes is not and was not an employe of this answering defendant under Chapter 111 of the Wisconsin Statutes;

(7) That it appears without dispute in the record that the reinstatement of William Stokes as ordered by the Board will not effectuate the purposes of the Act involved, but on the contrary such reinstatement would create a condtion or situation which would be in direct contradiction of the purposes of said Act.

Wherefore, the defendant Plankinton Packing Company prays that the court order its judgment dismissing the Complaint of the plaintiff herein.

Quarles, Spence & Quarles, Attorneys for the Defendant, The Plankinton Packing Company.

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[fol. 498] In Circuit Court of Milwaukee County

Case No. 206-077

Wisconsin Employment Relations Board, Petitioner,

vs.

The Plankinton Packing Company and United Packing House Workers of America, C. I. O., Local #50, Respondents

Plankinton Packing Company, Petitioner,

vs.

Wisconsin Employment Relations Board, William Stokes, and Local #50, United Packing House Workers of America, C. I. O., Respondents

Decision on Appeal

The first of the above entitled proceedings was commenced by the Wisconsin Employment Relations Board, hereinafter called the Board, for the enforcement of an order issued by said board on December 6, 1946.

The second above entitled proceeding was commenced for a review of the same order by the Plankinton Packing Company, hereinafter called the company, and also by respondent union.

The above entitled matter came on for a hearing before the Board on the 10th day of September, 1945, and on the 6th day of December, 1946, the board filed its decision, wherein, among other things, the board found that the [fol. 499] complainant, William Stokes, is a citizen and resident of the city of Milwaukee, Wisconsin, and the respondent company is a corporation organized and existing under the laws of the state of Wisconsin; and that the respondent United Packing House Workers of America is a voluntary labor oragnization affiliated with the Congress of Industrial Organization;

That on February 20, 1945, the National War Labor Board, in the settlement of a dispute then pending before said board involving respondent company and the respondent union, issued a directive which provided for union security, and by the terms of such directive all employees who on March 9, 1945, were members of the union in good

standing in accordance with its constitution and by-laws, and all members who became members after that day shall, as a condition of employment, maintain their membership in the union in good standing for the duration of the collective bargaining agreement in which this provision is incorporated, or until further order of the board;

That prior to the 9th day of March, 1945, and on or about the 6th day of March, 1945, the complainant Stokes, pursuant to the provisions of such directive, tendered to the respondent union in writing his resignation from such union; that immediately after the receipt by the union officers of the letter of resignation from the complainant Stokes, the employees of the company in the department in which Stokes was employed commenced a course of con- [fol. 500] duct intended to coerce and intimidate the complainant, Stokes, and to cause his loss of employment for the reason he had exercised his right to refrain from membership in the respondent union, and that on May 9, 1945, at the request of the respondent union, the company discharged the complainant as a result of the coercion, intimidation, and inducement of the respondent union.

And the board further found that the company committed an unfair labor practice by interfering with the right of Stokes to refrain from membership in the union by discharging said Stokes at the request of the union; that upon the aforesaid finding, the board issued an order providing, among other things, for the immediate and full reinstatement to his former position of the complainant.

Several briefs and memoranda in this matter have been filed by the respective parties, the last of which was filed on January 15, 1948. Prior to the last mentioned date, and thereafter, this court, because of repeated and protracted periods of illness, was unable to give the voluminous record and the many briefs filed the attention that the matter demanded, and hence the delay in the disposition of these matters.

The company and the union contend that the National Labor Relations Board, having assumed jurisdiction over the employer by its order certifying the C. I. O. as a bargaining agent for the employees, and having reasserted that jurisdiction in July of 1945, at which time it entertained a petition by the A. F. of L. union for representation proceedings, [fol. 501] and by reason of the National Board having is-

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sued its directive of February 20, 1945, the Wisconsin Board is without jurisdiction to entertain the issues presented by and within the unfair practice claim.

The company and the union contend, among other things, that Stokes was not an employee of the company because after his discharge he obtained regular and substantially equivalent employment elsewhere. The company contends that under Sec. 111.02 (3) an employee is defined as one "who has not obtained regular and substantially equivalent employment elsewhere."

Stokes did testify that since his discharge by the company he has secured other employment elsewhere, which, as far as he knows, "is a steady job", (R. 71), at a rate of pay which is substantially equal to that which he received from the Plankinton Company (R., 72).

The record, however, does not disclose whether Stokes was unemployed for any period of time after his discharge by the company, and up to the time that he obtained employment elsewhere. The fact that complainant instituted and prosecuted this proceeding is persuasive that complainant does not consider his new employment the equivalent of his former job with the company. The additional fact that by reason of his discharge the complainant lost certain security arising out of his seventeen years of employment with the company was a further fact which the board had a right to consider in determining whether Stokes has "obtained regular and substantially equivalent employment [fol. 502] elsewhere" (Sec. 111.02 (3)).

At any rate, the facts on this question and the inferences to be drawn therefrom were for the board to determine, and under the decisions of our supreme court the finding of the board in this respect cannot be disturbed.

The order of the board is also challenged by the company and the union as not being supported by credible and competent evidence.

I have examined the 69-page and 26-page resumes of testimony submitted by company's counsel, and also the entire record of testimony, together with exhibits attached thereto. In this proceeding for a review of the decision, the function and power of this court is limited both by statute and the decisions of our supreme court.

In *Appleton Chair Corp. v. United Brotherhood,* 239 Wis. 337, at 342, our supreme court declared that:

> "The court cannot exercise the powers conferred on the board as an administrative agency, and substitute its opinion for the judgment of the board."
>
> "The drawing of inferences from the facts is a function of the board and not of the courts." *National Labor Board v. Link-Belt Co.,* 311 U. S. 584, 597; *Wisconsin Labor R. Board v. Fred Rueping L. Co.,* 228 Wis. 473, 493.

No useful purpose would be served in quoting extensively from the record such portions of the testimony which under the interpretations and decisions of our supreme court enabled the trial board to reach its decision. They are referred to in the original brief submitted by counsel for the board.

I conclude that under the law, assuming the state board [fol. 503] has jurisdiction in this matter, there is in this record sufficient evidence, and inferences to be drawn therefrom, to support the findings of the board.

The chief contention of the company and the union is that the order of the board should be set aside for the reason that the state board is without jurisdiction or power to make said order.

Counsel for the board, to sustain the validity of the order of the board, relies upon the recent case of *LaCrosse Telephone Company v. W. E. R. B.,* 251 Wis. 583.

Our court, in its opinion in the aforesaid LaCross case, stated that:

> "There is nothing in the record of the proceedings before the state board or in the circuit court to indicate that the national board has ever in any manner exercised any of its powers or discretion or otherwise taken jurisdiction of any question or phase of the employer's or its employees' industrial relations. Although a petition that the guild be certified as the bargaining representative of the employer's employees has been filed by the guild with the national board on September 20, 1946, that board apparently never took jurisdiction pursuant thereto, and the petition was withdrawn at the request of the guild before it filed, on October 8, 1946,

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its petition with the state board for the latter's direction to conduct and hold such an election."

It appears to me that the issue in the LaCrosse case and that in the instant case are decidedly different. In the LaCrosse Telephone case, the national board had never passed upon any question between the employer and its employees, and no issue, as far as the record discloses, had ever been submitted to the national board, nor had its aid ever been sought. In the instant case, the national board [fol. 504] has several times passed upon the employment relations of the company and the local union.

In its decision of July 25, 1946 (Decisions and Orders of the N. L. R. B., Vol. 69, p. 920) the board, among other things, found that the Plankinton Company admits "that it is engaged in commerce within the meaning of the national labor relations act."

In the Matter of Plankinton Packing Co. and Packing House Workers' Organizing Committee (Decisions of the N. L. R. B., Vol. 5, p. 813, on p. 814) the board found that the Plankinton Packing Company "is the wholly owned subsidiary of Swift and Company."

Therefore the master agreement, Exhibit No. 8, is applicable in this case.

That directive provided for the appointment of an arbitrator by the National War Labor Board in the absence of a special agreement or contract provision therefor. There is no special provision applicable to the type of dispute here involved, and hence under the directive an arbitrator was to be appointed by the regional war labor board.

The effect of such an order has been considered by our court in the case of *International Brotherhood, Etc. v. W. E. R. B.*, 245 Wis. 541. In that case the union and the company entered into a collective bargaining agreement which specified, among other things, that new employees must "join the union and maintain membership in good standing as a condition of continued employment."

[fol. 505] An employee was not a member of the union, and was discharged. A hearing was held before the board, resulting in an order finding the employer guilty of unfair practice because the all-union contract had not been authorized by the majority of employees, and ordered the employer to offer the discharged employee reinstatement and make good his wage loss, etc.

It was brought to the attention of the court upon the hearing that the National War Labor Board had entered an order directing the employer to include in its contract with the union a closed shop provision. Our court declared that:

> "This order having been issued in the exercise of the war powers of the executive in time of war supplants and operates to suspend state action in regard to the same subject matter. It would appear, therefore, that reinstatement of the discharged employee at this time would be in conflict with the order of the National War Labor Board."

To the same effect was the case of *Theodore R. Oliver v. Local 656, International Brotherhood*, 185 S. W. 2d 255.

There is nothing in the record in the instant case, nor has my attention been called to any decision, to the effect that the order of the National War Labor Board of February 20, 1945, has ceased to be effective. It therefore appears to me that under the facts in this case the Wisconsin board is without jurisdiction to make the order of reinstatement.

Counsel for the company and the union rely upon the decisions of the U. S. Supreme Court in the cases of *Bethlehem Steel Co. v. New York State Labor Relations Board*, and *Allegheny Ludlum Steel Corp. v. Kelley*, U. S. Sup. Ct., 91 L. Ed. 887.

[fol. 506] In the aforesaid cases the court held that comparison of the state and federal statutes showed that both federal and state governments have laid hold of the same relationship for regulation, and it involves the same employers and the same employees. "Each has delegated to an administrative authority a wide discretion in applying this plan of regulation to specific cases, and they are governed by somewhat different standards. Thus if both laws are upheld, two administrative bodies are asserting a discretionary control over the same subject matter. * * *"

The court further stated:

> "If the two boards attempt to exercise a concurrent jurisdiction to decide the appropriate unit of representation, action by one necessarily denies the discretion of the other. The second to act either must follow the first, which would make its action useless

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and vain, or depart from it, which would produce a mischievous conflict. The state argues for a rule that would enable it to act until the federal board had acted in the same case. But we do not think that a case by case test of federal supremacy is permissible here. *The federal board has jurisdiction of the industry in which these particular employers are engaged, and has asserted control of their labor relations in general.* It asserts, and rightfully so, under our decision in the Packard case, supra, its power to decide whether these foremen may constitute themselves a bargaining unit. *We do not believe that leaves room for the operation of the state authority* asserted."

In the instant case, the provisions of the state and national acts are virtually identical, and each purports to cover and govern the situation presented here. Both acts make it an unlawful labor practice for an employer to encourage or discourage membership in any labor organization, or to interfere with the employees' right of self organization. Under both acts the boards may require the employers to cease and desist from unfair labor prac- [fol. 507] tices found, and to take affirmative action, including reinstatement of the employee.

As heretofore indicated, the National board has asserted its jurisdiction over the employer-employee relations of the petitioner and the company. By exercising such jurisdiction, the national board has determined that the Plankinton Company is in an industry in which the labor relations affect interstate commerce, as defined in subsection (7) of section 2 of the National Labor Relations Act.

Furthermore, the national act itself, Section 10 (a), provides that:

> "The board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

Thus it appears to me from the record in this case and the aforesaid provisions of the national act itself, and the decision in the Bethlehem Steel Company case, supra,

that the national board in this case has had exclusive power to act in the controversy herein, and that the state board is without jurisdiction herein.

I therefore conclude that the order entered by the state board on December 6, 1946, is void for the reason that the state board had no jurisdiction to make the same, and accordingly that the petition of the board for the enforcement of said order and the complaint of the petitioner must be and the same are hereby ordered dismissed.
[fols. 508-509] Counsel for the company and the union will prepare and present an order in accordance with the aforesaid conclusion by the court.

(S.) John C. Kleczka, Circuit Judge.

November 15, 1948.

[fol. 510] In Circuit Court of Milwaukee County

[Title omitted]

Order for Judgment

The above entitled matters having come on for hearing before this Court on the 28th day of April, 1947, the Wisconsin Employment Relations Board appearing by Beatrice Lampert representing the Attorney General, the United Packing House Workers of America, C. I. O., Local #50 appearing by its attorney, A. W. Richter, Plankinton Packing Company appearing by its attorneys, Quarles, Spence & Quarles, represented by E. H. Bargelt and Richard S. Gibbs, and William Stokes appearing by his attorney, David Beznor, the Court having heard the arguments of counsel, having examined the briefs submitted and being well and fully advised in the premises, and having rendered its written decision on November 15, 1948,

Now Therefore, It Is Ordered that the Petition of the Wisconsin Employment Relations Board for enforcement [fols. 511-512] of the Order made in said matter on the 6th day of December, 1946 and the Complaint of the said Wisconsin Employment Relations Board shall be hereby dismissed.

It Is Further Ordered that the Petition of the Plankinton Packing Company is hereby sustained and the Wisconsin

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Employment Relations Board shall be directed to dismiss the proceedings before it for lack of jurisdiction.

Let Judgment be entered accordingly.

Dated this 2nd day of December, 1948.

By the Court: John C. Kleczka, Circuit Judge.

[fol. 513] In Circuit Court of Milwaukee County

No. 206-077

Wisconsin Employment Relations Board, Petitioner,

vs.

The Plankinton Packing Company and United Packing House Workers of America, C. I. O., Local #50, Respondents

Plankinton Packing Company, Petitioner,

vs.

Wisconsin Employment Relations Board, William Stokes, and Local #50, United Packing House Workers of America, C. I. O., Respondents

Judgment

The above entitled matters having come on for hearing before this Court on the 28th day of April, 1947, the Wisconsin Employment Relations Board appearing by Beatrice Lampert representing the Attorney General, the United Packing House Workers of America, C. I. O., Local #50 appearing by its attorney, A. W. Richter, Plankinton Packing Company appearing by its attorneys, Quarles, Spence & Quarles, represented by E. H. Borgelt and Richard S. Gibbs, and William Stokes appearing by his attorney, David Beznor, the Court having heard the arguments of counsel, having examined the briefs submitted and being well and fully advised in the premises, having rendered its written decision on November 15, 1948, and having made its Order for Judgment on the 2nd day of December, 1948,

[fols. 514-519] Now, therefor-, upon all the files, records and proceedings had herein and upon motion of the attorneys for the Plankinton Packing Company,

It is adjudged and decreed that the Petition of the Wisconsin Employment Relations Board for enforcement of the Order made in said matter on the 6th day of December, 1946 and the Complaint of the said Wisconsin Employment Relations Board is hereby dismissed.

It is further adjudged and decreed that the Petition of the Plankinton Packing Company is hereby sustained and the Wisconsin Employment Relations Board is directed to dismiss the proceedings before it for lack of jurisdiction.

Dated this 2nd day of December, 1948.

By the Court, Fred J. Jaeger, Clerk, by Harold H. Gruettner, Deputy Clerk.

[fol. 520] In Circuit Court of Milwaukee County

[Title omitted]

Notice of Appeal to Supreme Court

To Clerk of Court, Milwaukee County, Milwaukee, Wisconsin; Quarles, Spence & Quarles, 828 North Broadway, Milwaukee 2, Wisconsin; A. W. Richter, 152 W. Wisconsin Ave., Milwaukee, Wisconsin; David Beznor, 808 N. Third St., Milwaukee, Wisconsin:

Please take notice that the Wisconsin Employment Relations Board appeals to the Supreme Court of the State of Wisconsin from the judgment entered in the above entitled matters in the office of the Clerk of Circuit Court for Milwaukee County on the 2nd day of December, 1948, dismissing the petition of the Wisconsin Employment Relations Board for enforcement of its order of December 6, 1946 and from the whole of said judgment.

Dated December 13, 1948.

Thomas E. Fairchild, Attorney General; Stewart G. [fols. 521-530] Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General, Attorneys for Wisconsin Employment Relations Board.

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[fol. 531] IN SUPREME COURT OF WISCONSIN

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—June 9, 1949

And now at this day came the parties herein, by their attorneys, and this cause having been argued by Beatrice Lampert, Asst. Attorney General for appellant, by Richard S. Gibbs for respondent Plankinton Packing Co., by Max Raskin and Irvin B. Charne for respondent United Packing House Workers of America, C. I. O., Local #50, and by David Beznor for respondent Stokes, and submitted.

[fols. 532-532a] IN SUPREME COURT OF WISCONSIN, MILWAUKEE, CIRCUIT COURT

WISCONSIN EMPLOYMENT RELATIONS BOARD, Petitioner,

vs.

THE PLANKINTON PACKING COMPANY and UNITED PACKING HOUSE WORKERS OF AMERICA, C. I. O., LOCAL #50, Respondents

PLANKINTON PACKING COMPANY, Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, WILLIAM STOKES, and Local # 50, United Packing House Workers of America, C. I. O., Respondents

JUDGMENT—July 12, 1949

This cause came on to be heard on appeal from the judgment of the Circuit Court of Milwaukee County, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the Circuit Court of Milwaukee County, in this cause, be and the same is hereby reversed.

And that this cause be and the same is hereby remanded to the said Circuit Court of Milwaukee County, with directions to enter judgment confirming and enforcing the provisions of the order of the Wisconsin Employment Relations Board as prayed for in its petition.

[fol. 533] IN SUPREME COURT OF WISCONSIN

WISCONSIN EMPLOYMENT RELATIONS BOARD, Appellant,

vs.

THE PLANKINTON PACKING CO., et al., Respondents

PLANKINTON PACKING CO., Respondent,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, et al., Appellants

Appeal from a Judgment of the Circuit Court for Milwaukee County: John C. Kleczka, Circuit Judge. Reversed

OPINION—Filed July 12, 1949

The proceeding was commenced in circuit court on January 17, 1947, under sec. 111.07 (7) Stats., for enforcement of an order of the Wisconsin Employment Relations Board issued December 6, 1946. The Plankinton Packing Company petitioned the circuit court for Milwaukee county for a review of the order dated December 6, 1946, holding the Plankinton Packing Company guilty of unfair labor practices and requiring the reemployment of William Stokes. Stokes appeared in support of the order. The Wisconsin Employment Relations Board appeared in opposition to the petition of the Plankinton Company.

[fol. 534] There was a hearing before the Board and the Board found in addition to formal findings, as follows:

> "4. That on or about the 20th day of February, 1945, the National War Labor Board, in the settlement of a dispute then pending before such Board involving the respondent Company and the respondent Union, issued a Directive Order which provided for union security. By the terms of such Directive, all employes, who on March 9, 1945 are members of the Union in good standing in accordance with its constitution and by-laws and all members who become members after that date, shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective bargaining agreement

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in which this provision is incorporated or until further order of the Board.

"5. That the complainant, William Stokes, was at the time that the Directive Order referred to in Finding Number 4 above was issued, a member of the respondent Union in good standing. That prior to the 9th day of March, 1945 and on or about the 6th day of March, 1945, the complainant, Stokes, pursuant to the provisions of such Directive, tendered to the respondent Union, in writing, his resignation from such Union. That a copy of such resignation was mailed to the respondent employer.

"6. Immediately after receipt by the union officers of the letter of resignation from the complainant Stokes, the employes employed by the respondent employer in the department in which Stokes was employed, all of whom were members of the respondent union, commenced a course of conduct intended to coerce and intimidate the complainant, Stokes, and to cause his loss of employment for the reason he had exercised his right to refrain from membership in the respondent union. That at the same time officers, agents and members of the respondent union began a course of conduct intended to coerce, intimidate and induce the respondent employer to discharge the complainant, Stokes, for the reason that Stokes had exercised his right to refrain from membership in such union. That such course of conduct consisted of calling names, engaging in work stoppages, prevailing upon the employe with whom Stokes had been riding to and from work to discontinue such arrangement; and by requesting and attempting to induce the employer to discharge the complainant Stokes.

"7. That on the 9th day of May, 1945, at the request of the respondent Union, the respondent employer discharged the complainant as the result of the coercion, intimidation, and inducement of the respondent Union and thus interfered with the right of the complainant, [fol. 535] Stokes, to refrain from membership in the respondent Union.

"Upon the basis of the above and foregoing Findings of Fact, the Board makes the following

Conclusions of Law

"(1) That the United Packing House Workers of America, C.I.O., Local No. 50, committed an unfair labor practice by coercing and intimidating William Stokes in the exercise of his right to refrain from membership in such organization, and by coercing, intimidating, and inducing the respondent employer to interfere with the right of complainant, Stokes, to refrain from membership in such organization, and by inducing the respondent employer to discharge Stokes from its employment.

"2. That the respondent, Plankinton Packing Company, committed an unfair labor practice by interfering with the right of William Stokes to refrain from membership in the respondent Union by discharging said Stokes at the request of and pursuant to the coercive tactics of the respondent Union.

"Upon the basis of the foregoing Findings of Fact and Conclusions of law, the Board, under and pursuant to Section 111.07 of the Wisconsin Statutes, makes the following

ORDER

"1. It is ordered that the respondent, United Packing House Workers of America, C.I.O., Local No. 50, shall immediately cease and desist from engaging in any activities such as name-calling, work stoppages or other coercive or intimidatory activities for the purpose of interfering with the right of William Stokes or any other employe of the respondent, Plankinton Packing Company, to refrain from membership in the respondent Union.

"2. It is further ordered that the respondent, Plankinton Packing Company, immediately cease and desist from interfering with the rights of any of its employes to refrain from membership in the respondent Union.

"It is further ordered that the respondent Plankinton Packing Company take the following affirmative

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action which the Board finds will effectuate the policies of the Wisconsin Employment Relations Act:

"(a) Offer to William Stokes immediate and full reinstatement to his former position without prejudice to the rights and privileges he previously en- [fol. 536] joyed.

"(b) Make whole William Stokes for any loss of pay he may have suffered by reason of the employer's discrimination against him by payment to him of the sum of money equal to the amount he normally would have earned as wages during the period from the time of his discharge to the date of the employer's offer of reinstatement, less any earnings, and employment compensation he may have received during that period of time.

"(c) Immediately post in conspicuous places at its place of employment, notice to all of its employes that it will cease and desist as above ordered."

It was further ordered that notices be posted and maintained in the customary manner.

Upon the appeal the order of the Board was challenged by the company and the Union as not being supported by credible and competent evidence. The trial court concluded that under the law, assuming that the State Board has jurisdiction, there is in this record sufficient evidence and inferences to be drawn therefrom to support the findings of the Board.

The trial court further stated that the chief contention of the company and the Union is that the order of the Board should be set aside for the reason that the State Board is without jurisdiction or power to make said order. Judgment was entered dismissing the petition of the Wisconsion Employment Relations Board for enforcement of the order and sustaining the petition of the Plankinton Packing Company, and the court directed the Wisconsin Employment Relations Board to dismiss the proceedings before it for lack of jurisdiction. The Wisconsin Employment Relations Board appealed from the judgment on the 15th day of December, 1948. Further facts will be stated in the opinion.

[fol. 537] ROSENBERRY, C. J.:

Upon this appeal two principal questions are raised: (1) Does the evidence sustain the findings of the Board as the trial court held? (2) Was the Employment Relations Board without jurisdiction to hear and determine the controversy?

The order of the Board required the employer to reinstate William Stokes, an employe of the Plankinton Company up to the time that he was discharged by the company. The Employment Relations Board, hereafter referred to as the Board, held that the Union committed an unfair labor practice by coercing and intimidating William Stokes in the exercise of his right to refrain from membership in such organization and by coercing, intimidating and inducing the respondent employer to interfere with the right of the complainant Stokes to refrain from membership in such organization and by inducing respondent employer to discharge Stokes from its employment. That the Packing Company committed unfair labor practice by interfering with the right of William Stokes to refrain from membership in the respondent Union by discharging said Stokes at the request of and pursuant to the coercive tactics of the respondent Union. The findings generally are attacked on the ground that they are not supported by the evidence. No useful purpose would be served by setting out the testimony, which we have carefully examined and from which examination we conclude that there is a ample substantial evidence to sustain the findings of the Board.

Only one serious question is raised. Sec. 111.07 (4) Stats., among other things provides:

> ". . . Final orders may dismiss the charges . . . and require him (the person complained of) to take such affirmative action, including reinstatement of em- [fol. 538] ployes with or without pay, as the board may deem proper. . . ."

On the hearing Stokes testified as follows:

> "So far as I know I have a steady job now. Offhand I think I made 90¢ an hour. I started for 82¢. When I left Plankinton my rate was 82½¢ an hour. I receive overtime where I work now after 8 hours in any day. I receive overtime for the hours I work after

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32. I work some weeks less and some more than 40 hours."

This appears to be all the evidence in the record as to Stokes' employment by E. R. Godfrey & Sons Co.

Stokes had been employed by the Plankinton Company for seventeen years. It is the contention of Plankinton Packing Company and the Union that at the time the order of the commission was entered under the provisions of sec. 111.02 (3) Stokes was not an employe. Sec. 111.02 (3) provides:

> "The term 'employe' shall include any person . . . working for another for hire in the state of Wisconsin in a nonexecutive or nonsupervisory capacity, and shall not be limited to the employes of a particular employer unless the context clearly indicates otherwise; and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and . . . (c) who has not obtained regular and substantially equivalent employment elsewhere, . . ."

It is the contention of the Union and the Packing Company that the evidence shows that Stokes has obtained regular and substantially equivalent employment, in other words that Stokes is within an exception, and therefore the introductory part of the section does not operate to continue him as an employe.

The Packing Company and the Union are claiming the benefit of an exception and the burden is upon them to establish the facts necessary to bring Stokes within the exception. Admittedly he was a discharged employe of the [fol. 539] company. The Company and the Union claim he has ceased to be an employe, therefore the burden is on them to establish the fact. The contention assumes that the fact that the wages are more than substantially equivalent to the wages which Stokes received at the Packing Company is sufficient to sustain this burden. Obviously factors other than wages are to be considered. The trial court held this was not sufficient.

The trial court said:

> "The record, however, does not disclose whether Stokes was unemployed for any period of time after his discharge by the company, and up to the time that he obtained employment elsewhere. The fact that complainant instituted and prosecuted this proceeding is persuasive that complainant does not consider his new employment the equivalent of his former job with the company. The additional fact that by reason of his discharge the complainant lost certain security arising out of his seventeen years of employment with the company was a further fact which the board had a right to consider in determining whether Stokes has 'obtained regular and substantially equivalent employment elsewhere.'"

The court held that the finding of the Board in this respect could not be disturbed. We see no grounds upon which the determination of the trial court can be reversed.

The chief contention of the company and the Union is that the order of the Board should be set aside for the reason that the State Board is without jurisdiction or power to make said order. The trial court found that Plankinton Company had admitted that it is engaged in commerce within the meaning of the National Labor Relations Act. The court further states that from the decisions of the National Labor Relations Board vol. 5, p. 813, it appears that the Board found that the Plankinton Company is the wholly owned subsidiary of Swift & Company.

[fol. 540] The trial court also refers to other facts and then states:

> "There is nothing in the record in the instant case, nor has my attention been called to any decision, to the effect that the order of the National War Labor Board of February 20, 1945, has ceased to be effective. It therefore appears to me that under the facts in this case the Wisconsin board is without jurisdiction to make the order of reinstatement."

In so concluding the trial court overlooked the fact that the War Labor Board and the effect of all its directives was wholly terminated by the presidential order number 9672, 11 Fed. Register, 221, as of December 31, 1945. As already

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stated the State Board's order was entered on December 6, 1946, almost a year after the War Labor Board went out of existence.

Every argument made by the Company and the Union in support of their contention that the State Board was without jurisdiction is answered adversely to them by the opinion of this court in *Wisconsin Employment Relations Board* v. *Algoma P. & V. Co.* (1948), 252 Wis. 549, 32 N. W. 2d 417, affirmed U. S. Supreme Court March 7, 1949, 93 Law Ed. adv. 541. No useful purpose would be served by reiterating here what was so well said there.

By the Court.—The judgment of the circuit court is reversed with directions to enter judgment confirming and enforcing the provisions of the order of the Wisconsin Employment Relations Board as prayed for in its petition.
[fol. 541] Clerk's Certificate to foregoing transcript omitted in printing.

[Endorsed:] State of Wisconsin Supreme Court. Plankinton Packing Company, Appellant vs. Wisconsin Employment Relations Board, et al, Respondents; Wisconsin Employment Relations Board, Appellant vs. The Plankinton Packing Company, Respondents. Certified Copy of Original Record.

[fol. 542] Supreme Court of the United States, October Term, 1949.

Order Extending Time Within Which to File Petition for Certiorari

Upon consideration of the application of counsel for the petitioner, it is ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 25th, 1949.

Fred M. Vinson, Chief Justice of the United States.

Dated this 6th day of October, 1949.

[fol. 543] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

ORDER ALLOWING CERTIORARI—Filed December 12, 1949

The petition herein for a writ of certiorari to the Supreme Court of the State of Wisconsin is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.